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Preparatory Commission for the International Criminal Court

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Proceedings of the Preparatory Commission at its ninth session (8-19 April 2002)

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Summary

Rapporteur: Mr. Salah **Suheimat** (Jordan)

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, met at United Nations Headquarters from 8 to 19 April 2002, in accordance with General Assembly resolution 56/85 of 12 December 2001.

2. In accordance with paragraph 2 of resolution F of the Conference, the Preparatory Commission consists of representatives of States which signed the Final Act of the Conference and other States which were invited to participate in the Conference.

3. Under paragraph 4 of General Assembly resolution 56/85, the Secretary-General was requested to reconvene the Preparatory Commission, in accordance with resolution F of the Conference, from 8 to 19 April and from 1 to 12 July 2002, so as to continue to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

4. In accordance with paragraph 6 of General Assembly resolution 56/85, the Secretary-General invited, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions, to participate in the capacity of observers in its sessions and work, and also invited as observers to the Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda.

5. Under paragraph 7 of the same resolution, non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure of the Commission, receiving copies of the official documents and making available their materials to delegates.

6. The Bureau of the Preparatory Commission, which was elected at the 1st and 2nd meetings of the Commission, on 16 and 22 February 1999, elected at the 34th and 37th plenary meetings, on 8 and 19 April 2002, two new Vice-Chairmen, from the Eastern European Group and the African Group. The Bureau continued its work, with the following composition:

Chairman:
Philippe Kirsch (Canada)

Vice-Chairmen:
Enver Daniels (South Africa)
Mirza Kusljugic (Bosnia and Herzegovina)
George Winston McKenzie (Trinidad and Tobago)

Rapporteur:
Salah Suheimat (Jordan)

7. The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Václav Mikulka, acted as Secretary of the Preparatory Commission. The Codification Division provided the substantive servicing for the Commission.

8. In accordance with the decision taken at its 33rd meeting, on 5 October 2001, the Preparatory Commission agreed on a work plan for its ninth session, which provided that, in addition to the working groups on the first-year budget, on basic principles governing a headquarters agreement to be negotiated between the Court and the host country and on the crime of aggression, the following two additional working groups would be established: the Working Group on the Assembly of States Parties -- Preparatory Documents, and the Working Group on Financial Issues. The coordinators for the two additional working groups were to be Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran) as Coordinator for the Working Group on the Assembly of States Parties — Preparatory Documents, and Mr. Rolf Fife (Norway) as Coordinator for the Working Group on Financial Issues.

9. Mr. Fife was no longer available to coordinate the work on financial issues; accordingly at the 34th plenary meeting, on 8 April, the Bureau reassigned Mr. Fife's tasks to four other coordinators. The list of coordinators at the current session is therefore as follows:

(a) Zsolt Hetesy (Hungary), Coordinator for the Basic Principles Governing a headquarters agreement to Be Negotiated between the Court and the Host Country;

(b) Saeid Mirzaee-Yengejeh (Islamic Republic of Iran), Coordinator for the Assembly of States Parties — Preparatory Documents;

(c) Valentin Zellweger (Switzerland), Coordinator for the First-Year Budget;

(d) Christian Much (Germany), Coordinator for the Financial Rules;

(e) Gaile Ramoutar (Trinidad and Tobago), Coordinator for the Victims Trust Fund;

(f) John Holmes (Canada), Coordinator for the remuneration of judges, the Prosecutor and the Registrar;

(g) Silvia Fernández de Gurmendi (Argentina), Coordinator for the Crime of Aggression.

10. At its 35th meeting, on 11 April 2002, the Preparatory Commission was addressed by His Excellency President Arthur Robinson of Trinidad and Tobago.

11. At its 36th meeting, on 15 April 2002, the Preparatory Commission took note of the oral report of Ms. Silvia Fernández de Gurmendi (Argentina), Chair of the Bureau's subcommittee acting as an interlocutory with the host country, on the functions that the subcommittee and the host country had identified as being necessary to take as soon as possible in order to ensure the expeditious establishment of the Court. The Chair of the subcommittee noted that those functions included the setting up of provisional systems to provide the basic elements necessary to ensure that the infrastructure was in place to welcome the first officials of the Court. Those systems, to be devised by an advance team of experts, would also ensure custody of information received after the entry into force of the Rome Statute and would allow for the Court to rapidly recruit personnel and procure the goods and services necessary for its effective functioning. To that end, the aim

was that the experts would assist with the setting up of systems for human resources, a computerized financial system that would take into account the special requirements of a judicial institution, a computerized data and case management system, a security system, as well as systems on legal issues, public information, and the administration and management of the building. More specifically, the setting up of those systems would entail the following tasks:

- In the area of human resources: drafting model personnel contracts; beginning the preparation of job descriptions and a job classification system; recommending a commercial health insurance plan; recommending rules and regulations for service-incurred accidents; and establishing, with the assistance of financial experts, a payroll system;

- In the area of finance: preparing for the setting up of bank accounts, a budget system and a payment/accounting system with all relevant checks and controls;

- In the area of information technology: in consultation with the host country, beginning the basic work and preparing a full outline of the options available for a computerized data and case management system; providing the necessary support to help set up the human resources and finance systems; assisting on aspects of information security; and preparing a web site allowing for Internet access;

- In the area of security: establishing a mechanism to ensure information security; preparing staff policies on security aspects; and establishing connections with security systems of other relevant organizations;

- On legal issues: assisting in the legal aspects of the human resources, finance and procurement systems which are being set up; dealing with host country privileges and immunities issues; performing a "custodial function", i.e., acknowledging receipt of communications to the Court prior to the election of the high officials; and taking custody of documents that could constitute potential evidence in future proceedings before the Court;

- On public information: dealing, inter alia, with routine information matters; producing information materials; and updating the web site;

- On buildings and facilities management: liaising with the host country on the preparation of the temporary building, the building of a courtroom space and the appropriate allocation of furnishings;

- On procurement: recommending and preparing model procurement contracts and liaising with the host country on the provision of movable infrastructure.

12. The Chair of the subcommittee noted that there would be a need for an expert to coordinate the performance of the above-mentioned tasks, and also stressed that the experts would not be drafting the actual job descriptions and other human resources matters, nor would they be doing any actual procurement. Such matters would ultimately be left for the officers of the Court. The role of the advance team, which would comprise seven or eight independent, mid-level experts, would be to provide guidance and assistance to the Court during its initial stages. The experts would establish the systems and undertake functions until the first meeting of the Assembly of States Parties. The Chair of the subcommittee further explained that discussions were under way with the two ad hoc Tribunals and the Department of Peacekeeping Operations of the Secretariat to identify experts with proven

experience in the handling of systems similar to those required by the Court. As regards the financing of the team of experts, mention was made of contributions from the European Union and the MacArthur Foundation, a private independent charitable foundation.

13. At its 37th meeting, on 19 April 2002, the Chair of the subcommittee recommended that in order to expedite the arrangements for the advance team, it would be advisable to request the Secretary-General of the United Nations to provide assistance for the necessary preparatory work on a fully reimbursable basis. At the same meeting, the Preparatory Commission agreed with that recommendation.

14. Also at its 37th meeting, the Preparatory Commission took note of the oral reports of the coordinators of the working groups on: the Crime of Aggression, the Assembly of States Parties — Preparatory Documents, the Basic Principles Governing a Headquarters Agreement, the First-Year Budget, the Financial Rules, the Victims Trust Fund and the remuneration of judges, the Prosecutor and the Registrar.

15. At the same meeting, the Preparatory Commission adopted its report on its ninth session (PCNICC/2002/1 and Add.1 and 2), containing the draft texts of the basic principles governing a headquarters agreement to be negotiated between the Court and the host country and the Financial Rules, as well as two draft resolutions for adoption by the Assembly of States Parties, one on the Secretariat of the Assembly of States Parties and the other on crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court.

16. The Preparatory Commission noted with satisfaction that, during its ninth session, 16 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105 of 8 December 1998, had been established to facilitate the participation of the least developed countries in the work of the Commission. The International Human Rights Institute of DePaul University (United States of America) provided accommodation to delegates from the least developed countries that attended the session.

17. The list of documents relating to the items considered at the ninth session and remaining on the work plan of the Preparatory Commission is contained in annex I to the present document.

Annex I

List of documents*

[Original: Arabic/English/French/Spanish]

General documents

Symbol	*Description*
PCNICC/1999/INF/3	Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998 — Note by the Secretariat
PCNICC/2000/1	Report of the Preparatory Commission for the International Criminal Court
PCNICC/2000/1/Add.1	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part I — Finalized draft text of the Rules of Procedure and Evidence
PCNICC/2000/1/Add.2	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part II — Finalized draft text of the Elements of Crimes
PCNICC/2000/INF/4	Statements made in plenary in connection with the adoption of the report of the Working Group on the Rules of Procedure and Evidence and the report of the Working Group on Elements of Crimes
PCNICC/2001/1	Report of the Preparatory Commission for the International Criminal Court (continued)
PCNICC/2001/1/Add.1	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part I — draft Relationship Agreement between the Court and the United Nations
PCNICC/2001/1/Add.2	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part II — draft Financial Regulations
PCNICC/2001/1/Add.2/Corr.1	Corrigendum
PCNICC/2001/1/Add.3	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part III — draft Agreement on the Privileges and Immunities of the Court
PCNICC/2001/1/Add.4	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part IV — draft Rules of Procedure of the Assembly of States Parties
PCNICC/2002/1	Report of the Preparatory Commission for the International Criminal Court (continued)

* General documents, documents issued at the sixth to ninth sessions of the Preparatory Commission, documents of the Working Group on a Draft Budget for the First Financial Year of the Court, the Working Group on Financial Issues — Remuneration of Judges, the Working Group on Financial Issues — Victims Trust Fund, the Working Group on Assembly of States Parties — Preparatory Documents, as well as documents relating to the crime of aggression issued at the first to ninth sessions. For the list of documents relating to the Working Group on the Basic Principles Governing a Headquarters Agreement to be Negotiated between the Court and the Host Country and of the Working Group on Financial Issues — Financial Rules, issued at the eighth and ninth sessions of the Preparatory Commission, held in 2001 and 2002, see document PCNICC/2002/1, annex III.

Symbol	*Description*
PCNICC/2002/1/Add.1	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part I — draft basic principles governing a headquarters agreement to be negotiated between the Court and the host country
PCNICC/2002/1/Add.2	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part II — draft Financial Rules

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/L.4	Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000) (draft summary)
PCNICC/2000/L.4/Rev.1	Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000) (summary)
PCNICC/2000/DP.1	Proposal submitted by the United States of America — further issue for consideration by the Preparatory Commission
PCNICC/2000/INF/5	List of delegations (sixth session)

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/L.1	Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001) (draft summary)
PCNICC/2001/L.1/Rev.1	Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001) (summary)
PCNICC/2000/INF/5/Corr.1	List of delegations (sixth session) — corrigendum
PCNICC/2001/INF/1	Information document submitted by Cameroon
PCNICC/2001/INF/2	List of delegations (seventh session)

Eighth session of the Preparatory Commission (24 September-5 October 2001)

Symbol	*Description*
PCNICC/2001/L.2	Road map leading to the early establishment of the International Criminal Court
PCNICC/2001/L.2/Corr.1	Corrigendum
PCNICC/2001/L.3	Proceedings of the Preparatory Commission at its eighth session (draft summary)
PCNICC/2001/L.3/Rev.1	Proceedings of the Preparatory Commission at its eighth session
PCNICC/2001/L.3/Rev.1/Add.1	Annex II — draft first-year budget
PCNICC/2001/DP.1	Comments by Turkey with regard to the terrorist crimes
PCNICC/2001/DP.2	Views of Estonia on the International Criminal Court
PCNICC/2001/INF/3	Statement by the Minister for Foreign Affairs of the Kingdom of the Netherlands, Jozias J. van Aartsen, presented during the eighth session of the Preparatory Commission on 25 September 2001
PCNICC/2001/INF/4	List of delegations (eighth session)

Ninth session of the Preparatory Commission (8-19 April 2002)

Symbol	*Description*
PCNICC/2002/L.1	Proceedings of the Preparatory Commission at its ninth session (8-19 April 2002) (draft summary)
PCNICC/2002/L.1/Rev.1	Proceedings of the Preparatory Commission at its ninth session (8-19 April 2002) (summary)
PCNICC/2002/L.1/Rev.1/Add.1	Annex II — Revised draft budget for the first financial period of the Court
PCNICC/2002/L.1/Rev.1/Add.2	Annex III — Conditions of service of judges of the International Criminal Court
PCNICC/2002/INF/1	Conclusions of the second Consultation Meeting on the implications for States members of the Council of Europe of the ratification of the Rome Statute of the International Criminal Court, Strasbourg, France, 13 and 14 September 2001, and Declaration on the International Criminal Court, adopted by the Committee of Ministers of the Council of Europe on 10 October 2001: Information document submitted by Liechtenstein
PCNICC/2002/INF/2	Note: Outcome of intersessional meeting of experts held at The Hague from 11 to 15 March 2002, circulated at the request of the Netherlands
PCNICC/2002/INF/3	Information document submitted by Spain: Declaration by the Presidency on behalf of the European Union concerning the adoption of the Common Position on the International Criminal Court
PCNICC/2002/INF/4	Statement by the Presidency of the European Union on behalf of the European Union: Information document submitted by Spain
PCNICC/2002/INF/5	Statement by the Director-General, ICC Task Force, Ministry of Foreign Affairs of the Government of the Kingdom of the Netherlands, Mr. Edmond Wellenstein, on the revised draft budget for the first financial period of the International Criminal Court, presented during the ninth session of the Preparatory Commission: Information document submitted by the Netherlands
PCNICC/2002/INF/6	List of delegations (ninth session)

Working Group on a Draft Budget for the First Financial Year of the Court

Eighth session of the Preparatory Commission (24 September-5 October 2001)[1]

Symbol	*Description*
PCNICC/2001/WGFYB/L.1	Draft budget for the first financial year of the Court: prepared by the Secretariat
PCNICC/2001/WGFYB/L.1/Corr.1	Corrigendum
PCNICC/2001/WGFYB/RT.1	Part One — Proposed structure and administrative arrangements
PCNICC/2001/WGFYB/RT.1/Add.1	Addendum — Priority guidelines for the preparation of a revised draft first-year budget of the International Criminal Court

Ninth session of the Preparatory Commission (8-19 April 2002)

Symbol	*Description*
PCNICC/2002/WGFYB/L.1	Revised draft budget for the first financial period of the Court, prepared by the Secretariat
PCNICC/2002/WGFYB/L.2	Draft resolution of the Assembly of States Parties on crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court
PCNICC/2002/WGFYB/DP.1	Proposal submitted by France regarding the vacancy rate during the first financial period
PCNICC/2002/WGFYB/RT.1	Proposal by the Coordinator — Internal audit
PCNICC/2002/WGFYB/RT.2	Revised draft budget for the first financial period of the Court — Text of Part One proposed by the Coordinator
PCNICC/2002/WGFYB/RT.2/Corr.1	Corrigendum
PCNICC/2002/WGFYB/RT.3	Task list for the preparation of the discussion on a draft budget for the first financial period of the Court at the tenth session of the Preparatory Commission: Discussion paper proposed by the Coordinator

Working Group on Financial Issues — Remuneration of Judges

Ninth session of the Preparatory Commission (8-19 April 2002)[2]

Symbol	*Description*
PCNICC/2002/WGFI-RJ/L.1	Report of the Working Group — Conditions of service of the judges of the International Criminal Court
PCNICC/2002/WGFI-RJ/L.1/Rev.1	Revision
PCNICC/2002/WGFI-RJ/RT.1	Conditions of service of the judges of the International Criminal Court

[1] No documents were issued under this heading during the first to seventh sessions of the Preparatory Commission.

[2] No documents were issued under this heading during the first to eighth sessions of the Preparatory Commission.

Working Group on Financial Issues — Victims Trust Fund

Ninth session of the Preparatory Commission (8-19 April 2002)[2]

Symbol	*Description*
PCNICC/2002/WGFI-VTF/DP.1	Proposal submitted by France concerning a trust fund for the benefit of victims

Working Group on Assembly of States Parties — Preparatory Documents

Ninth session of the Preparatory Commission (8-19 April 2002)[2]

Symbol	*Description*
PCNICC/2002/WGASP-PD/L.1	Election of judges, the Prosecutor an ' the Registrar of the International Criminal Court: Working paper by the Secretariat
PCNICC/2002/WGASP-PD/L.2	Provisional agenda for the first meeting of the Assembly of States Parties. Working paper by the Secretariat
PCNICC/2002/WGASP-PD/L.3	Secretariat of the Assembly of States Parties of the International Criminal Court: Information paper by the Secretariat
PCNICC/2002/WGASP-PD/L.4	Draft resolution of the Assembly of States Parties concerning the provisional arrangements for the Secretaria of the Assembly of States Parties
PCNICC/2002/WGASP-PD/DP.1	Election of judges, the Prosecutor and the Registrar of the International Criminal Court: Proposal submitted by Switzerland
PCNICC/2002/WGASP-PD/DP.2	Proposal submitted by Belgium
PCNICC/2002/WGASP-PD/DP.3	Nomination of the Prosecutor: Proposal submitted by Greece and Switzerland
PCNICC/2002/WGASP-PD/RT.1	Provisional arrangements for the Secretariat of the Assembly of States Parties: Discussion paper proposed by the Coordinator

The crime of aggression

General documents relating to the crime of aggression

First session of the Preparatory Commission (16-26 February 1999)

Symbol	*Description*
PCNICC/1999/DP.11	Proposal submitted by Bahrain, Iraq, Lebanon, the Libyan Arab Jamahiriya, Oman, the Sudan, the Syrian Arab Republic and Yemen on the crime of aggression

Second session of the Preparatory Commission (26 July-13 August 1999)

Symbol	*Description*
PCNICC/1999/DP.12	Proposal submitted by the Russian Federation: definition of the crime of aggression
PCNICC/1999/DP.13	Proposal submitted by Germany: definition of the crime of aggression
PCNICC/1999/INF/2	Compilation of proposals on the crime of aggression submitted at the Preparatory Committee on the Establishment of an International Criminal Court (1996-1998), the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (1998) and the Preparatory Commission for the International Criminal Court (1999)
PCNICC/1999/INF/2/Add.1	Addendum

Third session of the Preparatory Commission (29 November-17 December 1999)

Symbol	*Description*
PCNICC/1999/L.5/Rev.1	Proceedings of the Preparatory Commission at its first, second and third sessions (16-26 February, 26 July-13 August and 29 November-17 December 1999) (summary), annex IV

Fourth session of the Preparatory Commission (13-31 March 2000)

Symbol	*Description*
PCNICC/2000/L.1/Rev.1	Proceedings of the Preparatory Commission at its fourth session (13-31 March 2000) (summary), annex IV

Fifth session of the Preparatory Commission (12-30 June 2000)

Symbol	*Description*
PCNICC/2000/L.3/Rev.1	Proceedings of the Preparatory Commission at its fifth session (summary), annex II

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/L.4/Rev.1	Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000) (summary), annex V

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/L.1/Rev.1	Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001) (summary), annex V

Eighth session of the Preparatory Commission (24 September-5 October 2001)

Symbol	*Description*
PCNICC/2001/L.3/Rev.1	Proceedings of the Preparatory Commission at its eighth session (24 September-5 October 2001) (summary), annex III

Ninth session of the Preparatory Commission (8-19 April 2002)

Symbol	*Description*
PCNICC/2002/L.1/Rev.1	Proceedings of the Preparatory Commission at its ninth session (8-19 April 2002) (summary), annex IV

Working Group on the Crime of Aggression[3]

Third session of the Preparatory Commission (29 November-17 December 1999)

Symbol	*Description*
PCNICC/1999/WGCA/DP.1	Proposal submitted by Greece and Portugal
PCNICC/1999/WGCA/RT.1	Discussion paper proposed by the Coordinator: consolidated text of proposals on the crime of aggression
PCNICC/1999/WGCA/RT.1/Corr.1	Corrigendum
PCNICC/1999/WGCA/RT.1/Corr.2	Corrigendum (French only)

[3] No documents were issued under this heading during the first and second sessions of the Preparatory Commission.

Fourth session of the Preparatory Commission (13-31 March 2000)

Symbol	*Description*
PCNICC/2000/WGCA/DP.1	Proposal submitted by Colombia on the definition of the crime of aggression and on conditions for the exercise of the jurisdiction of the Court with regard to this crime
PCNICC/2000/WGCA/DP.1/Add.1	Addendum
PCNICC/2000/WGCA/DP.2	Proposal submitted by Colombia on the Italian proposal made orally in the Working Group on 13 March 2000
PCNICC/2000/WGCA/DP.3	Suggestions made orally by Italy on 13 March 2000 with regard to a structure for discussion on the crime of aggression
PCNICC/2000/WGCA/RT.1	Discussion paper proposed by the Coordinator: preliminary list of possible issues relating to the crime of aggression

Fifth session of the Preparatory Commission (12-30 June 2000)

Symbol	*Description*
PCNICC/2000/WGCA/INF/1	Reference document on the crime of aggression, prepared by the Secretariat

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/WGCA/DP.4	Proposal submitted by Germany: the crime of aggression — a further informal discussion paper
PCNICC/2000/WGCA/DP.5	Proposal submitted by Greece and Portugal

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/WGCA/DP.1	Proposal submitted by Bosnia and Herzegovina, New Zealand and Romania

Eighth session of the Preparatory Commission (24 September-5 October 2001)

Symbol	*Description*
PCNICC/2001/WGCA/DP.2	Proposal submitted by Bosnia and Herzegovina, New Zealand and Romania: definition of the crime of aggression
PCNICC/2001/WGCA/DP.2/Add.1	Addendum — Conditions for exercise of jurisdiction over the crime of aggression
PCNICC/2001/WGCA/DP.3	Proposal submitted by Guatemala on document PCNICC/2001/WGCA/DP.2

Ninth session of the Preparatory Commission (8-19 April 2002)

Symbol	*Description*
PCNICC/2002/WGCA/L.1	Historical review of developments relating to aggression, prepared by the Secretariat
PCNICC/2002/WGCA/L.1/Add.1	Addendum
PCNICC/2002/WGCA/DP.1	Proposal by the Netherlands concerning PCNICC/2002/WGCA/RT.1
PCNICC/2002/WGCA/RT.1	Definition of the crime of aggression and conditions for the exercise of jurisdiction: Discussion paper proposed by the Coordinator

Annex II

Revised draft budget for the first financial period of the Court

[*see PCNICC/2002/L.1/Rev.1/Add.1*]

Annex III

Conditions of service of judges of the International Criminal Court

[*see PCNICC/2002/L.1/Rev.1/Add.2*]

Annex IV

Crime of aggression

A. Definition of the crime of aggression and conditions for the exercise of jurisdiction[1]

Discussion paper proposed by the Coordinator

[Original: Spanish]

1. For the purposes of this Statute, an act of aggression means an act committed by a State as defined by United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974 and subject to a prior determination by the United Nations Security Council.

2. For the purpose of this Statute, a crime of aggression means an act committed by a person who, being in a position to exercise control over or direct the political or military action of a State, intentionally and knowingly orders or participates actively in the planning, preparation, initiation or waging of an act of aggression, which:

Option 1: by its characteristics and gravity amounts to a war of aggression.

Option 2: has the object or result of establishing a military occupation of, or annexing, the territory of another State or part thereof.

Option 3: is in manifest violation of the Charter of the United Nations.

3. Where the Prosecutor intends to proceed with an investigation in respect of a crime of aggression, the Court shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned as provided for in paragraph 1 of this article. If no Security Council determination exists, the Court shall notify the Security Council of the situation before the Court so that the Security Council may take action, as appropriate, under Article 39 of the Charter of the United Nations.

4. Where the Security Council does not make a determination as to the existence of an act of aggression or invoke article 16 of the Statute within six months from the date of notification,

Option 1: the Court shall proceed with the case.

Option 2: the Court shall dismiss the case.

Option 3: the Court shall, with due regard to the provisions of Articles 12, 14 and 24 of the Charter, request the General Assembly of the United Nations to make a recommendation within [12] months. In the absence of such a recommendation, the Court may proceed with the case.

[1] Issued at the ninth session of the Preparatory Commission.

Option 4: the Court may request the General Assembly to seek an advisory opinion from the International Court of Justice, in accordance with Article 96 of the Charter and article 65 of the Statute of the International Court, on the legal question of whether or not an act of aggression has been committed by the State concerned. The Court may proceed with the case if the International Court of Justice either:

(a) Gives an advisory opinion that an act of aggression has been committed by the State concerned; or

(b) Makes a finding in proceedings brought under Chapter II of its Statute that an act of aggression has been committed by the State concerned.

B. Consolidated text of proposals on the crime of aggression[2]

Prepared on the basis of the discussion papers proposed by the Coordinator

[Original: English]

Definition of the crime of aggression

Option 1

1. For the purposes of the present Statute, [and subject to a determination by the Security Council regarding the act of a State,] the crime of aggression means [the use of the armed force, including the initiation thereof, by an individual who is in a position of exercising control or directing the political or military action of a State, against the sovereignty, territorial integrity or political independence of a State in violation of the Charter of the United Nations.] any of the following acts committed by [an individual] [a person] who is in a position of exercising control or capable of directing the political or military action of a State:

(a) initiating, or

(b) carrying out.

Variation 1

[an armed attack] [the use of armed force] [a war of aggression] [a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing] against another State [against another State, or depriving other peoples of their rights to self-determination], in [manifest] contravention of the Charter of the United Nations, to violate [to threaten or to violate] the [sovereignty,] territorial integrity or political independence of that State [or the inalienable rights of those people] [except when this is required by the principle of equal rights and self-determination of peoples and the rights of individual or collective self-defence].

Variation 2

an armed attack directed by a State against the territorial integrity or political independence of another State when this armed attack was undertaken in manifest contravention of the Charter of the United Nations with the object or result of establishing a military occupation of, or annexing, the territory of such other State or part thereof by armed forces of the attacking State.

Variation 3

Add the following paragraph to paragraph 1, variation 1, above:

2. Provided that the acts concerned or their consequences are of sufficient gravity, [acts constituting aggression include] [the use of the armed force includes] [are] the following [whether preceded by a declaration of war or not]:

(a) The invasion or attack by the armed forces of a State of the territory of

[2] The consolidated text of proposals on the crime of aggression (section A of this annex) was issued at the third session of the Preparatory Commission.

another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade [of the ports or coasts] of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

3. When an attack [the use of armed force] under paragraph 1 has been committed, the

(a) planning

(b) preparing, or

(c) ordering

thereof by an individual who is in a position of exercising control or capable of directing the political or military action of a State shall also constitute a crime of aggression.

Option 2

For the purposes of the present Statute and subject to a prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating or carrying out a war of aggression.

Conditions for the exercise of jurisdiction

Option 1

1. The Court shall exercise its jurisdiction with regard to the crime of aggression in accordance with the provisions of article 13 of the Statute.

2. The Security Council shall determine the existence of an act of aggression perpetrated by the State whose national is concerned in accordance with the relevant

provisions of the Charter of the United Nations before proceedings take place in the Court with regard to the crime of aggression.

3. The Security Council, acting in accordance with article 13 (b) of the Statute of the International Criminal Court, shall first make a decision establishing that an act of aggression has been committed by the State whose national is concerned.

4. The Court, upon receipt of a complaint relating to the crime of aggression under article 13 (a) or (c), shall, with due regard to the provisions of Chapter VII of the Charter of the United Nations, first request the Security Council to determine whether or not an act of aggression has been committed by the State whose national is concerned.

5. The Security Council shall make a decision upon this request within [6] [12] months.

6. Notification of this decision shall be made by letter from the President of the Security Council to the President of the International Criminal Court without delay.

Variation 1

7. In the absence of a decision of the Security Council within the time frame referred to in paragraph 5 above, the Court may proceed.

8. The decision of the Security Council under paragraph 5 above shall not be interpreted as in any way affecting the independence of the Court in the exercise of its jurisdiction with regard to the crime of aggression.

Variation 2

7. Notwithstanding the provisions of paragraph 2 above, in the absence of a decision by the Security Council within the time frame referred to in paragraph 5 above, the Court shall, with due regard to the provisions of Articles 12, 14 and 24 of the Charter, request the General Assembly of the United Nations to make a recommendation.

8. The General Assembly shall make such a recommendation within [12] months.

9. Notification of this recommendation shall be made by letter from the President of the General Assembly to the President of the International Criminal Court without delay.

10. In the absence of such a recommendation within the time frame referred to in paragraph 8 above, the Court may proceed.

11. The decision of the Security Council under paragraph 5 above or the recommendation of the General Assembly under paragraph 8 above shall not be interpreted as in any way affecting the independence of the Court in the exercise of its jurisdiction with regard to the crime of aggression.

Option 2

1. The Court shall exercise its jurisdiction with regard to the crime of aggression subject to a determination by the Security Council, in accordance with article 39 of the Charter, that an act of aggression has been committed by the State concerned.

2. When a complaint related to the crime of aggression has been lodged, the Court shall first seek to discover whether a determination has been made by the Security Council with regard to the alleged aggression by the State concerned, and if not, it will request, subject to the provisions of the Statute, the Security Council to proceed to such a determination.

3. If the Security Council does not make such a determination or does not make use of article 16 of the Statute within 12 months of the request, the Court shall proceed with the case in question.

Option 3[3]

For the purposes of the present Statute and subject to a prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating or carrying out a war of aggression.

Explanatory note

A. On the definition of the crime of aggression

(i) The previous text represents an attempt to consolidate, to the extent possible, the proposals already made on the question of definition of the crime of aggression for the purpose of the Rome Statute.

(ii) The text accepts two basic principles, which seem to enjoy widespread support: the principle under which the crime of aggression is committed by political or military leaders of a State; and the principle that the planning, preparation or ordering of aggression should be criminalized only when an act of aggression takes place.

(iii) Option 1 presents three variations after the first sentence in paragraph 1. These variations correspond to most of the various approaches that were suggested with regard to the definition: general definition, definition based on the object or result of occupying or annexing the territory of the attacked State or part thereof, general definition plus detailed list of acts taken from General Assembly resolution 3314 (XXIX) of 14 December 1974.

(iv) Option 2 covers both the definition and the relationship with the Security Council, and is based, in its definitional part, on article 6 (a) of the Charter of the International Military Tribunal of Nürenberg.

(v) On some points, square brackets appeared to be inevitable to show the different formulas that were suggested. Where part of the text is added in square brackets, this is not intended to indicate lesser support for that part.

[3] Option 3 is duplicated and appears also under the definition of the crime of aggression since it covers the two issues, namely, the definition of the crime and conditions for the exercise of jurisdiction.

B. On the conditions for the exercise of jurisdiction

(i) The text is an attempt to consolidate all the proposals circulated so far on this issue, taking also into account views expressed by delegations from the floor.

(ii) Option 1 is an attempt to reflect views seeking to reconcile the prerogatives of the Security Council with the independence of the Court.

Hence, it is founded on the following considerations:

- Article 5 (2) of the Statute of the International Criminal Court stipulates that the definition of the *crime of aggression* and the conditions under which the Court shall exercise jurisdiction with respect to this crime shall be consistent with the relevant provisions of the Charter of the United Nations;
- As set out in Article 39 of the Charter, the Security Council has the responsibility for establishing the existence of an *act of aggression*;
- The Court exercises its jurisdiction over persons on the *crime of aggression* (articles 1, 5 and 25 of the Statute);
- The *crime of aggression* presupposes the existence of an *act of aggression*;
- The trigger mechanism should therefore recognize the primary responsibility of the Security Council to establish the existence of an *act of aggression* in accordance with the relevant provisions of the Charter;
- Variation 2 is based on the assumption that if, for any reason, the Security Council cannot make a decision, the Charter itself provides for an internal mechanism to address the issue.

(iii) Option 3 embodies both the definition and the relationship between the Court and the Security Council, and is based in its conditional part on the proposal as contained in article 23 (2) of the International Law Commission draft statute for the International Criminal Court.

B. Preliminary list of possible issues relating to the crime[4] of aggression

Discussion paper proposed by the Coordinator

A possible checklist of issues to be addressed in developing proposals for a provision on aggression in accordance with article 5, paragraph 2, of the Rome Statute and resolution F, paragraph 7, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

N.B. This preliminary list of possible issues is based on an initial review of the Rome Statute with a view to determining the provisions that may in some way be related to the definition of the crime of aggression. This non-exhaustive list is intended to facilitate a thematic discussion of possible issues most of which are closely interrelated.

I. Possible issues relating to the Rome Statute

- **Definition**

  (i) Whether the definition should be more general in nature referring to what may be the essential characteristics of the crime of aggression. (Possible instruments of reference: Charter of the United Nations; Nürenberg Charter; Draft Code of Crimes against the Peace and Security of Mankind; case law and other documents)

  (ii) Whether the definition should include a more specific list of acts which could constitute the crime of aggression. (Possible instrument of reference: General Assembly resolution 3314 (XXIX))

  (iii) Whether it would be possible to identify some acts listed in resolution 3314 (XXIX) and add them to the general definition of the crime of aggression.

- **Conditions under which the Court shall exercise jurisdiction**

  (i) What role should be played by the Security Council in relation to the jurisdiction of the Court over the crime of aggression?

  (ii) What action, if any, could be taken in the event that the Security Council fails or otherwise declines to determine that an act of aggression has occurred?

  (iii) What are the legal effects on the functions of the Court arising from a determination by the Security Council that an act of aggression was committed by a State?

[4] The preliminary list of possible issues relating to the crime of aggression was at the fourth session of the Preparatory Commission.

- **Consistency with the relevant provisions of the Charter of the United Nations**

- **Complementarity and admissibility**

  How would the provisions of the Statute on complementarity (admissibility, challenges to the Court's jurisdiction) be applicable to the crime of aggression? (This could include issues dealt with in preambular paragraphs 6 and 10, article 1, as well as articles 12 to 19 of the Rome Statute.)

- ***Ne bis in idem***

  Applicability of exceptions to the crime of aggression (Rome Statute, art. 20 (3), only refers to crimes in arts. 6, 7 and 8)

- **General principles of criminal law**

  Consider the relationship between the definition of the crime of aggression and the articles on general principles of criminal law:

  (i) *Nullum crimen sine lege* (art. 22)

  (ii) *Nulla poena sine lege* (art. 23)

  (iii) Non-retroactivity *ratione personae* (art. 24)

  (iv) Individual criminal responsibility (art. 25)

  (v) Exclusion of jurisdiction over persons under eighteen (art. 26)

  (vi) Irrelevance of official capacity (art. 27)

  (vii) Responsibility of commanders and other superiors (art. 28)

  (viii) Non-applicability of statute of limitations (art. 29)

  (ix) Mental element (art. 30)

  (x) Grounds for excluding criminal responsibility (art. 31)

  (xi) Mistake of fact or mistake of law (art. 32)

  (xii) Superior orders and prescription of law (art. 33)

- **Investigation and prosecution**

  Consider the provisions concerning the investigation and prosecution of crimes with respect to the crime of aggression (e.g., initiation of an investigation (art. 53))

- **National security information**

  Consider the provisions concerning the protection of national security information in relation to the crime of aggression (art. 57 (3) (c), art. 72, art. 93 (4) and art. 99 (5))

- **International cooperation and judicial assistance**

  These provisions may require further consideration depending upon the applicability of the principle of complementarity to the crime of aggression.

The following parts of the Rome Statute do not appear to raise possible issues regarding the definition of the crime of aggression:

Part 4. Composition and Administration of the Court

Part 7. Penalties (The penalties set forth in article 77 are applicable to all crimes referred to in article 5.)

Part 8. Appeal and Revision

Part 10. Enforcement

Part 11. Assembly of States Parties

Part 12. Financing

Part 13. Final Clauses (The provision on aggression is to be adopted in accordance with articles 121 and 123 pursuant to article 5 of the Rome Statute.)

II. Possible issues relating to the Elements of Crimes

- The elements of the crime of aggression are provided for in resolution F rather than article 9 of the Rome Statute.
- Consider the structure and general provisions of the elements of the other crimes prepared pursuant to article 9 of the Rome Statute to ensure consistency.

III. Possible issues relating to the Rules of Procedure and Evidence

- Review the final text of the Rules of Procedure and Evidence prepared by the Preparatory Commission to determine whether there are provisions that require consideration in relation to the definition of the crime of aggression.

IV. Other possible issues

- What are the legal effects on the ICC of a decision of the International Court of Justice concerning aggression?

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Addendum

Annex II

Revised draft budget for the first financial period of the Court (discussion paper prepared by the Coordinator)

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A. Text of Part One prepared by the Coordinator

Introduction

1. At its eighth session, the Preparatory Commission for the International Criminal Court requested the Secretariat to prepare a revised draft budget for the first financial year of the Court, taking into account the priority guidelines proposed by the Coordinator (PCNICC/2001/L.3/Rev.1/Add.1, appendix) for consideration by the Commission at its ninth session. The present document is submitted pursuant to that request. In accordance with regulation 2 of the draft Financial Regulations (PCNICC/2001/L.4/Add.2), the financial period shall consist initially of one calendar year unless otherwise decided by the Assembly of States Parties for the first-year budget of the Court. It is proposed that the first financial period should last from the first meeting of the Assembly of States Parties to the end of the subsequent calendar year. Based on the assumption expressed in the last preambular paragraph of General Assembly resolution 56/85 of 12 December 2001 that the first meeting of the Assembly will be held by September 2002, the first financial period would thus stretch from September 2002 to the end of December 2003, namely 16 months. The proposed estimates of the requirements for the first financial period of the International Criminal Court (ICC or "the Court") relate to the costs of operation of the ICC and costs related to the sessions of the Assembly of States Parties, the meetings of the Bureau of the Assembly and the Committee on Budget and Finance.

2. The magnitude of the resource requirements of the Court in the first financial period of its operation would depend upon the level and scope of activities of the Court, bearing in mind the need to provide a stronger capacity for the Court and the Assembly of States Parties to respond to various challenges. The proposed resource requirements are responsive to the necessity to create, among other things, the ability for the Court — financially, administratively and procedurally — to recruit the required staff at short notice.

3. The proposed structure of the organs of the Court, together with the corresponding administrative arrangements, is discussed in Part One of the present document. These take into account the composition and experience of the most relevant existing international judicial institutions, such as the International Court of Justice (ICJ), the International Tribunal for the Former Yugoslavia (ICTY), the International Tribunal for Rwanda (ICTR) and the International Tribunal for the Law of the Sea (ITLOS). It is anticipated that the overall staffing resource requirements of the Court might consist of 199 posts in 2003 and 64 posts in the period from September to December 2002 (see Part Two, tables 3 and 4). Organizational charts containing details of the proposed staffing structure in 2003 are shown in annex I to the present document. It is emphasized that these charts are purely illustrative and should be interpreted as neither a target for expenditure nor as an agreed blueprint for the future structure of the organs of the Court.

4. The cost estimates are outlined in Part Two. They were calculated on the basis of a number of assumptions, the proposed structure and administrative arrangements for the Court, and experience with similar institutions, such as ICTY. In accordance with regulation 3.2 of the draft Financial Regulations, which, inter alia, provides that the proposed programme budget shall be presented in the currency of the statutory headquarters of the Court, the present draft budget has been set out in

euros. The United Nations operational rate of exchange as of March 2002 (US$ 1.00 = €1.16, or €1 = $0.862069) was used.

5. Since the first financial period would cover 16 months and it may be particularly difficult to accurately foresee the Court's needs during this **initial** period, reference is made to regulations 4.2 and 4.3 concerning the appropriation line as well as regulation 3.6 relating to the supplementary budget, of the draft Financial Regulations. Should circumstances unforeseen at the time of adoption of the budget make it necessary, the appropriation line adopted by the States Parties may be utilized or supplementary budget proposals may be submitted by the Registrar with respect to the first financial period. Accordingly, a reserve for unforeseen expenses has been included in the present draft budget.

6. Pursuant to General Assembly resolution 56/85, the first meeting of the Assembly of States Parties will be held at United Nations Headquarters in New York. The venues of the subsequent meetings of the Assembly of States Parties, the Bureau and the Committee on Budget and Finance in 2003 are unknown. Therefore, two sets of estimates have been prepared for those meetings: one based on the assumption that they would be held at The Hague and the other on the assumption that they would be held in New York. The exact dates and duration of the meetings are also unknown. Accordingly, the proposed dates and duration for the Assembly of States Parties (two-week resumed first meeting in January 2003, one-week resumed meeting/special session in April 2003 and two-week second meeting in September 2003), the Bureau of the Assembly (two sessions of three days' duration each in March and June 2003) and the Committee on Budget and Finance (one five-day session in August 2003) have been taken for illustration purposes only and without prejudice to future decisions thereon.

7. The Inaugural Meeting of the Court will be held at The Hague. The Government of the Netherlands has expressed its commitment to fully finance the Inaugural Meeting. The date of the Inaugural Meeting is not yet known. Subject to the understanding referred to in the preceding paragraph, it is assumed that it would be held in February 2003, shortly after the resumed first meeting of the Assembly in January 2003. Requirements for the Inaugural Meeting of the Court were not included in the present draft budget.

8. At this point, a number of issues with financial implications remain to be clarified. One such issue is that concerning the premises, furniture and information technology equipment of the Court. In his statement at the eighth session of the Preparatory Commission, the Minister for Foreign Affairs of the Netherlands announced that the Government of the Netherlands had identified a building which, with a total area of 12,000 square metres, was sufficiently spacious and flexible to serve as the temporary premises of the Court from the first day of its existence.[1] The construction and renovation/alteration costs (e.g., interior layout and design), including for the courtroom, will be financed by the Netherlands Government in accordance with the Netherlands bid-book on which the Rome Conference based its decision on the ICC headquarters. The Foreign Minister also indicated that the

[1] **The Head of the Netherlands delegation indicated at the outset of the ninth session of the Preparatory Commission that the host country was also exploring alternative options that might better match the requirements of the International Criminal Court. The results from that endeavour will be taken into account at the tenth session of the Preparatory Commission.**

Government would provide furniture and equipment for up to 100 officials and staff members and that special attention would be given to security measures.[2] From follow-up discussions with representatives of the host Government, it was determined that this offer encompasses computers and information technology, including the necessary data security arrangements, as appropriate. The host Government is conducting further assessment studies on that basis and will provide the Preparatory Commission with more detailed **information about this** offer at the earliest possible date **on the basis of a full-cost estimate by the Secretariat**.[3]

9. As the present draft budget was, to the extent possible, prepared on a full-cost basis, the estimates regarding rental of premises and information technology equipment will probably have to be adjusted at a later stage in order to bring them into conformity with the details of the Netherlands offer. Based on the number of judges and the proposed number and level of posts, it is estimated that the Court would require a minimum of 8,600 square metres of space to accommodate offices for the Presidency, Divisions/Chambers, the Office of the Prosecutor and the Registry, the Common Services Division, courtrooms, detention facilities and ancillary areas. Furthermore, the Foreign Minister confirmed the host Government's willingness "to contribute financially to the initial meetings of the Assembly of States Parties and its Bureau", as well as to "fully finance the meeting for the Inaugural Meeting of the Court".[4]

10. Post requirements are presented in net terms, **given that** a decision has been **taken by the Preparatory Commission against** the adoption of a system of staff assessment **and** tax equalization. Furthermore, the requirements were computed on the basis of the post structure, salaries, allowances and entitlements applicable to the United Nations common system. Should the States Parties to the International Criminal Court adopt different standards, adjustments will have to be made to the budget. It should also be noted that there are certain items that were not included at this stage, but may have to be considered in the future. Annex VI to the present document contains a list of some of those outstanding items, which may have been included in the budget for the first financial period, once the relevant decisions have been made, or in subsequent budgets.

11. The estimates provided in the present draft budget are based on cost parameters for the years 2002 and 2003. The level of resource requirements for the first financial year of the Court will depend on whether the resumed first meeting of the Assembly of States Parties, the second meeting of the Assembly, the special session of the Assembly, the meetings of the Bureau of the Assembly and the meetings of the Budget and Finance Committee are held at The Hague or in New York. If they are held at The Hague, the total resource requirements are estimated at **€39,891,300**, of which €30,764,200 would relate to the cost of operations of the Court, and €9,127,100 to the cost of the aforementioned meetings plus the first meeting of the Assembly of States Parties to be held in New York in 2002. If all the meetings are held in New York, the total estimated requirements for the first financial period would be **€39,696,900**. Further details concerning total

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[2] **See PCNICC/2001/INF/3, p. 3.**

[3] **The host country and the Secretariat will discuss these issues in an endeavour to arrive at a common approach on the matter as soon as possible after the ninth session of the Preparatory Commission.**

[4] **See PCNICC/2001/INF/3, p. 3.**

requirements can be found in paragraphs 107 and 108 as well as tables 1 and 2 in Part Two of the present document.

Part One
Proposed structure and administrative arrangements[5]

I. Seat of the Court

12. The seat of the Court is to be established at The Hague in the Netherlands (Statute, art. 3, para. 1). The host State has secured a location for the permanent premises of the Court.[6] Pending the construction of the premises, the Government of the Netherlands has announced that it will make available temporary premises as from the date of establishment of the Court. The premises are an existing building that offers enough room to meet start-up needs as well as expansion of the Court's activities within its walls. Detention facilities will be made available at a different location.

II. Premises requirements

13. During the **initial** phase **of the Court**, the temporary premises should accommodate the following needs of the Court:

(a) The Presidency, consisting of the President and the First and Second Vice-Presidents (art. 38, para. 3), as well as its staff;

(b) Office space for an Appeals Division, a Trial Division and a Pre-Trial Division (art. 39, para. 1), i.e., an additional 15 judges and their staff;

(c) A courtroom that is available for the Appeals Chamber, the Trial Chambers and the Pre-Trial Chamber;

(d) The Office of the Prosecutor;

(e) The Registry;

(f) A detention facility at a separate location.

14. The experience of the International Tribunal for the Former Yugoslavia has shown that due account should be taken of the need to ensure the separation of the facilities belonging to the Office of the Prosecutor from the rest of the Court.[7] The particular requirements of the Court, however, will have to be taken into account. The temporary premises provided by the Government of the Netherlands would, if

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[5] The present text has been discussed and provisionally adopted by the Working Group. It may be modified subject to changes to Part Two at the tenth session of the Preparatory Commission.

[6] In his statement made at the eighth session, the Foreign Minister of the Netherlands announced that the permanent seat of the Court's headquarters would comprise some 30,000 square metres of office space, courtrooms, service areas, areas for the public and detention facilities. Construction of the premises is expected to be finished by 2007.

[7] See report of the Expert Group, A/54/634, para. 250.

so required, allow for the facilities of the Office of the Prosecutor to be separated from the rest of the Court's **offices** within the premises to be made available.

15. Apart from the premises to accommodate the needs referred to in paragraph 13 above, appropriate premises will be required for the first meetings of the Assembly of States Parties (Statute, art. 112), the Bureau (art. 112, para. 3 (a)), the Inaugural Meeting of the Court, any special sessions of the Assembly (art. 112, para. 6), and meetings of the Committee on Budget and Finance.

III. Assembly of States Parties

16. According to the Statute, the Assembly can meet either at the seat of the Court or at the Headquarters of the United Nations (art. 112, para. 6). The first meeting of the Assembly, pursuant to General Assembly resolution 56/85, will be held at United Nations Headquarters in New York. The Government of the Netherlands **indicated during the eighth session of the Preparatory Commission that it felt a special but by no means exclusive responsibility for the effective functioning of the Court. At that session the Government of the Netherlands also** expressed its willingness to contribute financially to the initial meetings of the Assembly**, on the basis of an agreed budget, once the political parameters have been assessed.**[8]

17. The first meeting of the Assembly will be attended by representatives of at least 60 States Parties, who may be accompanied by alternates and advisers (art. 112, para. 1). The maximum size of the delegations of the States Parties is not regulated by the Statute. In view of the importance of the first meeting, it could be assumed that delegations will be composed of no less than three persons.[9]

18. In addition, States that have signed the Statute or the Final Act may attend the sessions of the Assembly in the capacity of observers (Statute, art. 112, para. 1). One hundred thirty-nine States have signed the Statute and 144 States have signed the Final Act. The composition and size of the observer delegations is not regulated by the Statute. However, by paragraph 12 of resolution 56/85, the General Assembly requested the Secretary-General to invite as observers to the meeting of the Assembly of States Parties representatives of intergovernmental organizations and other entities that have received a standing invitation from the General Assembly, representatives of interested regional intergovernmental organizations and other international bodies invited to the Rome Conference or accredited to the Preparatory Commission. By paragraph 13 of resolution 56/85, the Assembly noted that non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission or having consultative status with the Economic and Social Council whose activities are relevant to the activities of the Court may also participate in the work of the Assembly of States Parties in accordance with agreed rules.

19. The official and working languages of the Assembly are those of the General Assembly of the United Nations (Statute, art. 112, para. 10). According to the Statute, the Assembly shall meet once a year and, when circumstances so require, hold special sessions (art. 112, para. 6).

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[8] See PCNICC/2001/INF/3, p. 3.

[9] In the General Assembly Hall at United Nations Headquarters, each delegation is entitled to six seats.

20. Pursuant to rule 37 of the draft Rules of the Assembly of States Parties (PCNICC/2001/L.4/Add.4), it is envisaged that a secretariat would be responsible for receiving, translating, reproducing, distributing and keeping custody of documents and decisions of the Assembly, the Bureau and any subsidiary bodies that may be established by the Assembly, as well as providing interpretation. Thus, the secretariat will be involved in the substantive servicing of meetings and preparing pre-session, in-session and post-session documentation.

21. Issues relating to the nature, scope and functions of the secretariat are **being** addressed by the Preparatory **Commission**. With respect to the first meeting of the Assembly of States Parties, the General Assembly, in its resolution 56/85, requested the Secretary-General to undertake the preparations necessary to convene it. Thus, the Secretariat of the United Nations will provide substantive servicing of the first meeting of the Assembly of States Parties. According to the note of the Secretariat concerning the responsibilities entrusted to the Secretary-General under resolution 56/85, the overall cost requirements based on two meetings per day were estimated at €3,083,400 ($2,658,100), and based on four meetings per day, €3,245,200 ($2,797,600).[10]

22. **The Preparatory Commission noted that the estimate for servicing the Assembly of States Parties and its subsidiary bodies were based on the assumption that the United Nations would provide these services and would be reimbursed accordingly. The reimbursement would include a "programme support" (overhead) fee of 13 per cent of the cost. The Preparatory Commission recommends to the Assembly that it direct the Common Services Division to seek alternative sources of conference servicing with the aim of conducting a comparative assessment of those sources.**

23. Three additional meetings of the Assembly of States Parties are contemplated in 2003: a resumed first meeting of two weeks' duration in January 2003, a resumed/special session of one week's duration in April and the second meeting of two weeks' duration in September 2003. The estimated cost of these meetings would be €5,687,500 if held in New York, or €5,881,900 if held at The Hague. These estimates do not include the cost of the first meeting of the Assembly of States Parties referred to above.

IV. Bureau of the Assembly

24. According to the Statute, the Bureau of the Assembly shall meet as often as necessary, but at least once a year (art. 112, para. 3 (c)). In 2002, the Bureau is expected to **hold its first meeting**, also at United Nations Headquarters in New York.

25. The Bureau will be composed of 21 members elected by the Assembly (art. 112, para. 3 (a)). It is expected that there will be two meetings of the Bureau in 2003, one three-day session in March and another three-day session in June to discuss organizational matters. The Bureau meetings would require relevant premises arrangements and, if held away from the seat of the Court, would also entail travel and related expenses for the judges, the Prosecutor and the Registrar. **In accordance with rule 38, in connection with rule 2, of the draft Rules of**

[10] A/C.6/56/L.25, para.10.

Procedure of the Assembly of States Parties, Arabic, Chinese, English, French, Russian and Spanish are the official and working languages of the Bureau. The representative character of the Bureau (ibid., para. 3 (b)) as well as its composition need to be taken into account when assessing resources needed.

26. The Government of the Netherlands, **as the host country, indicated at the ninth session of the Preparatory Commission that it has committed itself** to contribute financially to the initial meetings of the Bureau, **in the first financial period to the amount of up to €300,000 as a non-deductible contribution to the United Nations Trust Fund to Support the Establishment of the International Criminal Court**.

V. Inaugural Meeting of the Court

27. Once elected, the 18 judges and the Prosecutor are required to make a solemn undertaking (Statute, art. 45). The Inaugural Meeting of the Court is expected to be held early in 2003. The meeting at which this takes place may be used for the election of the Presidency of the Court by the judges, who might also at the same meeting determine the membership of the Divisions and the Chambers. Thus, appropriate premises arrangements should be envisaged for the Inaugural Meeting of the Court.

28. The Inaugural Meeting will be held at The Hague. The Government of the Netherlands has expressed its commitment to fully finance the meeting.[11] That includes hotel costs for the judges as well as the follow-up meeting of the judges in The Hague for a period of up to two days.

29. The Inaugural Meeting will entail round-trip travel arrangements for the 18 judges and the Prosecutor. The cost thereof will be borne by the Court.

VI. Committee on Budget and Finance

30. The establishment by the Assembly of States Parties of a Committee on Budget and Finance, bearing in mind article 112, paragraphs 2 (b) and (d) and 4, of the Statute has been contemplated in the work of the Preparatory Commission.[12] The Committee will be composed of 12 members. It is envisaged that the Committee would meet in August 2003 for a five-day session to deal with a draft budget for the second financial period of the Court.

31. It is estimated that €502,500 will be required if the Committee meets in New York and €545,700 if its meeting is held at The Hague.

VII. Critical needs of the Court during the first financial period

32. The establishment of all necessary Court functions will consume a substantial amount of time and resources. Certain functions will have to be set up by organs of the Court and will therefore have to await the election of the judges, the Prosecutor

[11] Ibid.

[12] PCNICC/2001/L.4/Add.2.

and the Registrar, respectively. However, certain critical capacities will need to be established immediately in order to satisfy the requirements of the Statute and meet practical needs in the **initial** phase. These include the capacity to collect, preserve and acknowledge receipt of incoming information and potential evidence. Moreover, they should include an adequate capacity to ensure high-level external relations, communications and public information. Among immediate practical needs are the establishment of operational information and communication networks as well as the setting up of other basic systems necessary for security purposes, a smooth recruitment and procurement process and similar urgent requirements.

33. In addition to satisfying such immediate needs, the budget for the first financial period must provide for sufficient resources for the Court to sequentially build up the necessary capacities. In the following, the above needs will be assessed in relation to each organ of the Court.

34. Some needs are common to more than one organ of the Court. To the extent that the independent role of those organs is not affected, certain basic administrative functions can be carried out by a Common Services Division (see sect. XII below). In this connection, careful attention is devoted to identifying which specific administrative functions could be carried out by such a division so as to maximize the cost-effectiveness of the Court, without prejudice, in particular, to the independent role of the Office of the Prosecutor.

VIII. The Presidency

35. The three judges composing the Presidency, i.e. the President and the First and Second Vice-Presidents, shall serve on a full-time basis as soon as they are elected (art. 35, para. 2) at the Inaugural Meeting. According to the Statute, their salaries, allowances and expenses may be decided upon by the Assembly, and these salaries and allowances cannot be reduced during their term of office (art. 49).

36. In respect of requirements relating to the ICC judges, the terms and conditions of service of the members of ICJ, ICTY and ICTR could be considered. The conditions of service and compensation of members of ICJ, ICTY and ICTR are discussed in detail in the report of the Secretary-General on the matter (A/C.5/56/14). For reference purposes, the gist of the conditions of service and compensation of members of ICJ, the judges of ICTY and ICTR as well as of ITLOS are set out in annex IV to the present document.

37. The Presidency is entrusted in the Statute (art. 38, para. 3 (a)) with the "proper administration of the Court, with the exception of the Office of the Prosecutor". In the first financial period, the critical functions for the Presidency (besides the judicial functions referred to in the Statute and the finalized draft Rules of Procedure and Evidence) would be: (a) high-level external relations and communications (to include media/outreach functions), in conjunction with the Registrar, and (b) establishing systems for the functioning of the Chambers, including pre-trial, trial and appeals capacity. Such systems are crucial, as the manner in which the first applications under the relevant provisions of the Statute

are handled will both establish procedures for the future and affect the credibility of the Court.[13]

38. For the purposes of the first financial period, the functions described both in points (a) and (b) in the preceding paragraph will be performed largely by the Presidency, with the Registrar, when elected, providing daily direction (see prior para. 36).

Staffing requirements

39. The role of staff of the Presidency will be to support the President and the two Vice-Presidents in the conduct of external as well as internal relations and communications of the Court. Activities in the first year of operation will include: (a) providing advice on and initiating relationships with States and international organizations; (b) drafting speeches, presentations and papers to assist in "putting the ICC on the world map"; (c) internal and external strategic decision-making as to issues of primary concern to the ICC; and (d) planning and implementation of such internal and external strategies. It is to be expected that in the first financial period of operation a large amount of standard-setting decisions — operational, administrative, managerial and legal — will have to be made by the Presidency. Adequate staff levels will be required to create the capacity to do so. In addition, there will have to be adequate capacity to deal with ad hoc situations requiring almost immediate action. The minimum structure which will need to be in place would include: (a) Chef de Cabinet (P-5), providing direct support to the President; (b) one Legal Officer (P-3), providing support to the two Vice-Presidents;[14] and (c) one spokesperson (P-4). It is assumed that the Spokesperson for the Presidency would also act as head of the Public Information and Documentation Section to be set up as part of the Registry.[15] A further three General Service positions should be provided for the Office of the Presidency, one of them at the Principal level, to provide support to the President. The organizational structure of the Presidency is set out in annex I.A.

IX. Judges other than those comprising the Presidency

40. While according to article 35 of the Statute judges comprising the Presidency shall serve on a full-time basis as soon as they are elected, it is to be decided by the Presidency, on the basis of the workload of the Court and in consultation with its members, to what extent the remaining judges shall be required to serve on a full-time basis. In addition to the Presidency, it will be necessary in the course of the first financial period to have the budgetary capacity to require a sufficient number of judges to serve at the Court. This will notably be for the purpose of conducting pre-

[13] In the light of the experience of ICTY and ICTR, all decisions would most likely be subject to appeal. Accordingly, if a Pre-trial Chamber is functioning, the Appeals Chamber would also need to be ready to function in order to deal with any appeals that would arise. In addition, since under the finalized draft Rules of Procedure and Evidence victims may apply directly to the Chambers, this situation might arise even before a referral from the Prosecutor.

[14] It is envisaged that this Legal Officer could also be assigned, if necessary, to tasks in the Chambers Legal Support Section.

[15] The combining of these two functions may have to be revisited as the workload of the Court increases. See annexes I and III, respectively.

trial procedures (three judges or a single judge), as dictated by the relevant rules of procedure and evidence, and for dealing with interlocutory appeals.[16] Accordingly, it would be necessary in the first budget to provide, on an as-needed basis, for judges beyond the three which are part of the Presidency. It is proposed that six additional judges should be included in the budget.[17]

41. The salaries, allowances and expenses of those judges are to be decided upon by the Assembly of States Parties in accordance with article 49 of the Statute. The conditions of service and compensation set out in annex IV could be consulted for reference purposes.

42. For the staff requirements necessary to assist judges other than those comprising the Presidency, attention is drawn to paragraph 76 below.

X. Office of the Prosecutor

43. The Office of the Prosecutor will act independently as a separate organ of the Court (Statute, art. 42, para. 1).

44. It is assumed that the Prosecutor will be elected at a resumed first meeting of the Assembly in early 2003.

45. The Prosecutor can be assisted by one or more Deputy Prosecutors (Statute, art. 42, para. 2). The Deputy Prosecutors shall also be elected by the Assembly, but from a list of candidates provided by the Prosecutor. For each position of a Deputy Prosecutor to be filled, the Prosecutor would have to nominate three candidates (art. 42, para. 4). In view of these requirements, it is unlikely that the first Deputy Prosecutor would be elected during the resumed first meeting of the Assembly (unless consensus regarding the suitable candidates is reached prior to the session). Accordingly, the first Deputy Prosecutor could be elected at a special session of the Assembly to be held in 2003. Presumably the Prosecutor will, when in office, determine when a second Deputy Prosecutor should be elected. For purposes of the present draft budget, it is assumed that, in the first financial period of the Court, the Prosecutor would need only one Deputy Prosecutor to assist him/her on matters such as recruitment, investigation and prosecution policies, structuring of the Office, etc.

46. The Prosecutor and the Deputy Prosecutor shall serve on a full-time basis (art. 42, para. 2). They will take up their respective duties after having made a solemn undertaking in accordance with article 45 of the Statute. It would be up to the Assembly of States Parties to decide on the terms of office of both the Prosecutor and the Deputy Prosecutor in accordance with article 42, paragraph 4, of the Statute. For the conditions of service and compensation of the Prosecutor, annex IV may be consulted. Consideration may be given in this respect to the desirability of grading their terms of office in such a manner that the experience and the institutional memory of the Office of the Prosecutor will be preserved and the continuity of its work ensured.

[16] Art. 39 (b) (ii).

[17] The budgetary consequences of this flexible approach can be reflected by the requisite vacancy percentage in the budget document, indicating that it is not expected that all budgeted posts will become an actual expenditure until the last few months of the first period of operations.

47. As to the staffing needs of the Office, the Prosecutor will have the authority to appoint such qualified staff as may be required, including the appointment of investigators (Statute, art. 44, para. 1). They will be part of the staff of the Court and subject to staff regulations to be proposed by the Registrar, with the agreement of the Presidency and the Prosecutor, and approved by the Assembly (ibid., para. 3). The Prosecutor would also appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children (art. 42, para. 9). **The advisers on issues relating to sexual and gender violence and violence against children would form part of the staff of the Office of the Prosecutor.**

48. The possible requirement of an upsurge capacity (for example, in the case of a referral of a situation or if an evidence preservation situation arises under article 18, paragraph 6, or article 19, paragraph 8) can be met through the equivalent of general temporary assistance funds during the first budgetary period. Such upsurge capacity would be essential for the Prosecution Section, the Investigation Section, the Information and Evidence Section, and to the translation and interpretation function of the Office of the Prosecutor. Efficient procedures for the utilization of general temporary assistance funds would contribute to avoiding under- or over-utilization of such temporary staff in the event that upsurge capacity is required.

49. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, the facilities and other resources thereof (art. 42, para. 2). The establishment of a Common Services Division (see sect. XII below) would be in full accord with this requirement.

50. In exceptional circumstances, the Prosecutor may employ gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations (art. 44, para. 4). Gratis personnel shall be employed in accordance with guidelines to be established by the Assembly (ibid.).

Staffing requirements

51. While it is difficult to predict whether there will be any referral of a situation to the Court during the first budgetary period, it is to be expected that the Office of the Prosecutor will receive many communications from the time of the establishment of the Court pursuant to the Prosecutor's *proprio motu* power of preliminary examination under article 15. The requirements of this mode of operation should not be underestimated. The Office of the Prosecutor must exercise due diligence within the parameters of article 15 and avoid being seen as inoperative in the face of complaints. It is important that the Office of the Prosecutor sets the highest standards in its dealings with sources of information relevant to article 15, paragraph 2, as well as with the Pre-Trial Chamber. **The Prosecutor will have to take action according to articles 53 to 58 of the Statute as well as Part 9 thereof, and** it cannot be excluded that the Office of the Prosecutor, through article 15, paragraph 3, may find itself in an article 18, paragraph 6, or article 19, paragraph 8, situation during the first budgetary period, requiring investigative steps to preserve evidence. The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence in the course of the investigations (finalized draft Rules of Procedure and Evidence, rule 10). Information which the Prosecutor may receive during the first budgetary period pursuant to article 15, paragraph 2,

article 18, paragraph 6, and article 19, paragraph 8, is potential evidence and must be handled appropriately so as to avoid contamination. In general, the credibility of the Court will be built on the quality of its work from the outset of its existence.

52. **Immediate Office of the Prosecutor**. This Office would include the Prosecutor, at the Under-Secretary-General level,[18] one Deputy Prosecutor, at the Assistant Secretary-General level, one Special Assistant to the Prosecutor at the P-5 level, one Special Assistant to the Deputy Prosecutor at the P-4 level, and one Spokesperson for the Office of the Prosecutor (P-4). The Office would be supported by a pool of three General Service staff with one Administrative Assistant at the Principal level assigned to the Prosecutor.

53. In order to help the Prosecutor recruit the relevant staff and exercise the statutory authority to manage and administer his or her Office, an **Administrative Unit** directly attached to the Immediate Office of the Prosecutor would be needed. The Unit would include one Budget Officer (P-4), one Personnel Officer (P-3), one Programmer/Analyst (P-3), one Language Coordinator (P-3),[19] and two Administrative Assistants (General Service (Other level)).

54. Accordingly, the overall staffing requirement of the Immediate Office of the Prosecutor would consist of the Prosecutor, one Deputy Prosecutor, at the Assistant Secretary-General level, one P-5, three P-4, three P-3,one General Service (Principal level) and four General Service (Other level) staff.

55. The functional needs of the Office of the Prosecutor suggest that it would need a Prosecution Division, an Investigation Division and a separate Appeals Section from the first budgetary period onward.

Prosecution Division

56. The **Prosecution Division** would be responsible for functions such as litigation; legal review of information and potential evidence; drafting of charges; directing investigators; advising senior management on investigation and prosecution strategies; drafting general guidelines and policies for the Office of the Prosecutor; drafting legal submissions; providing expert legal advice; and conducting legal research and training. To do this most effectively, the budget for the first period should provide for a Prosecution Section, a Legal Advisory and Policy Section **and an Appeals Section** within the Prosecution Division. The

[18] This level of the Prosecutor is shown for illustration purposes and without prejudice to the future discussion thereon.

[19] Document translation has proved to be one of the most persistent and serious problems in the experience of the ad hoc Tribunals. The ICC Office of the Prosecutor must have its own document translation capacity. The open nature of the Court's territorial jurisdiction necessarily means that this function will have to draw on general temporary assistance staff at the working level. However, there needs to be a permanent language coordination capacity within the Office of the Prosecutor through which needs are assessed, requests channelled, and advice is formulated for the Prosecutor on relevant internal language policies. It is not feasible to predict beforehand what the exact upsurge need for translators and interpreters would be in the event of a referral of a situation or if an evidence preservation situation were to arise under article 18, paragraph 6, or article 19, paragraph 8, during the first financial period. It is essential that the procedures for utilization of general temporary assistance funds for upsurge staff be efficient and sufficiently flexible to allow for the establishment of a translation and interpretation unit in the Office of the Prosecutor within reasonable time.

Prosecution Division should be headed by a Director of Prosecutions at the D-2 level, supported by an Administrative Assistant (General Service (Other level)).

57. The **Prosecution Section** within the Prosecution Division would review information and evidence; direct investigators; litigate; and draft charges and legal submissions on questions of procedure and evidence. The Section would also advise senior management of the Office of the Prosecutor on investigation and prosecution strategies, alongside other sections, and contribute to the drafting of general guidelines and policies of the Office of the Prosecutor. The Section would require five prosecutors, one at the P-5 level (Chief of Section), two at the P-4 level and two at the P-3 level. This team would be supported by a pool of two Secretaries (General Service (Other level)). The Section would probably require additional general temporary assistance staff if a situation were to be referred to the Court during the first budgetary period.[20]

58. The **Legal Advisory and Policy Section** would be required to provide independent specialist legal advice and legal drafting, in particular on questions pertaining to jurisdiction, including the scope of the subject-matter jurisdiction. The Section would also have to assist with the drafting of guidelines and policies relevant to the operation of the Office of the Prosecutor,[21] as well as with the training of members of the Office of the Prosecutor, general temporary assistance staff and gratis personnel.[22] Staff of the Section would include one Senior Legal Adviser (P-5), two Legal Advisers (P-4) and **three** Legal Advisers (P-3), **including legal advisers with specific expertise on issues of sexual and gender violence and violence against children**. Administrative support to the Legal Advisory and Policy Section could be provided by one Secretary (General Service (Other level)).

59. The **Appeals Section**, which should be within the Prosecution Division, **and** would work with the Prosecution Section and Legal Advisory and Policy Section in handling interlocutory appeals (and later appeals proper) before the Appeals

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[20] It would be preferable to pool the prosecutors in one section within the Prosecution Division during the first budgetary period, so as to better enable the Director of Prosecutions to respond in a flexible manner to the needs for prosecutors whether in connection with preliminary examination, investigation or litigation. The time-consuming nature of the investigation of international crimes means that the prosecution's litigation function during the first budgetary period would, even in the event that there is a referral of a situation, be limited to certain pre-trial questions, in particular admissibility proceedings, where the Prosecution Section should work closely with the Legal Advisory and Policy Section and the Appeals Section. If there is no referral of a situation, the litigation function would be more limited, with an emphasis on article 15, paragraph 3, and subsequent admissibility proceedings, in both of which the Prosecution Section should be assisted by the Legal Advisory and Policy Section and the Appeals Section.

[21] Some of the subjects that will require guidelines are: criteria for full investigation; requesting assistance; interviewing witnesses; interviewing suspects and accused; use of policy and expert witnesses; written statements; search and seizure; field missions; format-of-the-charges document; formal internal review of charges; disclosure; contact with the media; file management; network access; and appeal procedure.

[22] The experience of the ad hoc Tribunals underlines the importance of these functions and that there must be appropriate expertise to execute them from the outset of the work of the Office of the Prosecutor, when precedents on jurisdiction will be set and internal standards will be established for the Prosecutor's action under, inter alia, articles 15, paragraphs 1-3, 17 to 19, 53 and 54. The Legal Advisory and Policy Section should also be responsible for the establishment and maintenance of an electronic legal decisions and submissions database from the start, as well as other electronic services relevant to the elements of applicable offences and key procedural and evidentiary rules.

Chamber of the Court. The Appeals Section should have one P-5 level post of Senior Appeals Counsel and one Appeals Counsel at the P-4 level. The Section would be supported by one General Service (Other level) staff member.

60. Accordingly, the overall staffing resource requirement of the Prosecution Division and the Appeals Section would consist of one D-2, three P-5, five P-4, **five** P-3 and five General Service (Other level) posts.

Investigation Division

61. The **Investigation Division** would be responsible for functions such as reception and management of information and potential evidence; preliminary examination; investigative steps to preserve evidence; investigation, including analysis of contextual and systemic facts; and advising senior management on investigation strategy based on, inter alia, assessments of overall victimization. To do this most effectively, the budget for the first period should provide for three sections: an Information and Evidence Section, an Investigation Section and an Analysis Section. The Investigation Division would be headed by a Chief of Investigation at the D-1 level assisted by one Administrative Assistant (General Service (Other level)).

62. The **Information and Evidence Section** would be required from the outset of the work of the Office of the Prosecutor.[23] As pointed out above, the Prosecutor shall be responsible for the retention, storage and security of information and physical evidence in the course of the investigations. Information which the Prosecutor may receive during the first budgetary period pursuant to articles 15, paragraph 2, 18, paragraph 6, and 19, paragraph 8, is potential evidence and must be appropriately handled to avoid contamination. The Section would require one Evidence Management Officer (P-4) and three General Service (Other level) staff. The Section would have to be reinforced with Professional and General Service (Other level) staff on the basis of general temporary assistance funds in the event a situation is referred to the Court or an evidence preservation situation arises under article 18, paragraph 6, or article 19, paragraph 8, during the first budgetary period.

63. Although it is uncertain whether a full investigation will commence during the first budgetary period of the Court, the Office of the Prosecutor needs a basic investigative capacity, an **Investigation Section**, to work alongside other sections in executing preliminary examination under article 15, paragraph 2, and to coordinate and undertake investigative steps to preserve evidence under article 18, paragraph 6, or article 19, paragraph 8, or if an investigation proper is launched. The Section should be headed by a Deputy Chief of Investigation at the P-5 level (Chief of Section) and should have four investigators, two at the P-4 level and two at the P-3 level. The Section would be supported by two General Service (Other level) staff. If a full investigation is launched or an evidence preservation situation arises pursuant to article 18, paragraph 6, or article 19, paragraph 8, during the first budgetary

[23] Article 15 communications or complaints will most likely be submitted to the Court early in the first budgetary period. It is important for the Office of the Prosecutor to have the capacity to appropriately receive and manage materials submitted together with such complaints.

period, the Section would have to be reinforced with general temporary assistance staff at the Professional and General Service levels.[24]

64. The **Analysis Section** would have to be provided for in the first budgetary period to serve functions such as collecting and analysing potential evidence on systemic facts required by contextual elements of crimes;[25] analysing military, police and civilian power structures in territorial States; developing evidence relevant to superior responsibility; advising senior management on investigation strategy by assessing overall victimization in territorial States;[26] identifying and assisting experts; analysing document collections; **developing tools of criminal intelligence-analysis such as time lines and visual aids relevant to factual patterns,**[27] providing a mapping and reference service and sensitive sources coordination; and assisting the Legal Advisory and Policy Section with the training of staff members on background information relevant to territorial States. The Section should be led by a Chief Analyst (P-4) and have one Military Analyst (P-3), one Political Analyst (P-3) and one Criminal Intelligence Analyst (P-2), supported by one General Service (Other level) staff member. If a full investigation starts or an evidence preservation situation were to arise under article 18, paragraph 6, or article 19, paragraph 8, during the first budgetary period, it would be necessary to hire two or three additional analysts (P-2/P-1) with expertise relevant to the territorial State(s) on a general temporary assistance basis.

65. Accordingly, the overall staffing resource requirement of the Investigations Division would consist of one D-1, one P-5, four P-4, four P-3, one P-2 and seven General Service (Other level) staff.

66. Resources should be foreseen for travel of staff of the Office of the Prosecutor, including with regard to functions pursuant to article 15 of the Statute, as well as for special printers, scanners, photocopiers, monitors and software requirements. For reasons of confidentiality and security it is necessary for the Office of the Prosecutor from the beginning of its operation to have a computer network that is entirely separate from the rest of the Court and unconnected with the outside world.

67. The organizational chart of the Office of the Prosecutor is set out in annex I.B. Proposed post requirements are outlined in table 7.

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[24] In such a situation the Prosecutor may wish to establish a rapid reaction capacity within the Investigation Section, led by regular section members but supplemented by general temporary assistance staff. The Office would also have to turn to general temporary assistance staff in case there was a need for forensic expertise during the first budgetary period. It is very difficult to estimate the number of general temporary assistance staff that the Investigation Section would require if there was a need for upsurge capacity during the first budgetary period.

[25] For example, the existence of an armed conflict or a widespread or systematic attack directed against a civilian population. These requirements refer to systemic facts which differ fundamentally from the crime-specific facts with which criminal investigators normally work in national jurisdictions.

[26] The experience of ICTY shows that it is essential to have an appropriate analytical capacity within the Office of the Prosecutor from the outset of its work. By providing an early overview of the overall victimization in a situation referred to the Court, the Analysis Section would play a vital role in developing a proper investigation strategy of the Office of the Prosecutor, which can have significant long-term resource implications (a proper investigation strategy will contribute to a more focused and economical prosecution).

[27] **Other such aids would include spreadsheets showing chains or patterns of events, and multi-layered maps showing both background and crime-specific facts.**

XI. The Registry

68. The structure and staffing requirements of the Registry would depend on the level and scope of activities of the Court.

69. The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the powers and functions of the Prosecutor (Statute, art. 43, para. 1). It shall be headed by the Registrar, who shall be the principal administrative officer of the Court (ibid., para. 2). Under article 38, paragraph 3 (a), of the Statute, "[t]he President, together with the First and Second Vice-Presidents", constituting the Presidency, is entrusted with "the proper administration of the Court, *with the exception of the Office of the Prosecutor*" (emphasis added). Moreover, pursuant to article 43, paragraph 2, "the Registrar shall exercise his or her functions under the authority of *the President*" (emphasis added) and, in accordance with paragraph 1 of the same article, is "responsible for the non-judicial aspects of the administration and servicing of the Court". Article 42 grants the Prosecutor "full authority over the management and administration of the Office, including the staff, facilities and other resources thereof". Therefore, a distinguishing aspect of the International Criminal Court is that the Registrar is placed more directly under the judiciary, and the Prosecutor is granted explicit powers regarding the administration of the Office of the Prosecutor.

70. In order to maintain this division between the administrative functions to support the judiciary and the administrative functions which support the Office of the Prosecutor, while at the same time maximizing economy and efficiency, it is advisable in the budget for the first financial period of operation of the Court to provide for the establishment of a Common Services Division. This common administrative branch, although not organizationally part of the Registry, would report to the Registrar. It is anticipated that the judiciary and the Office of the Prosecutor would pool those administrative services that are a common requirement of both.[28] The requirements of the Registry in the first financial period take into account this approach.

71. The Registrar shall be elected by the judges. A Deputy Registrar can be elected "if the need arises, and upon the recommendation of the Registrar" (Statute, art. 43, para. 4). It is assumed that the Registrar would be elected by the judges as soon as possible following the **Special session of the Assembly of States Parties**. It is further assumed in the present budget that it would not be absolutely essential to have a Deputy Registrar in the first financial period.

Staff requirements for the Registry

Office of the Registrar

72. The **Immediate Office of the Registrar** would be responsible for the daily management of the judicial pillar of the Court, under the overall authority of the Presidency in conformity with articles 38 and 43 of the Statute. The Immediate Office would also be responsible for liaison and coordination with the Common Services Division on behalf of the judiciary. It would also focus on rendering advice on international law aspects, including the interpretation and application of legal

[28] See sect. XII below.

instruments regarding the status, privileges and immunities of the ICC, international agreements with the host country and as well as with other States, relocation-of-witnesses agreements and donation agreements. **This Office would also deal with legal aspects of detention matters.** The Immediate Office would consist of the Registrar at the Assistant Secretary-General level, a Legal Officer (P-4) to act as legal adviser, a Special Assistant/**Legal Officer** (P-3), **with a legal background, who would, inter alia, review documents on issues referred to above** one General Service (Principal level) and one General Service (Other level) staff.

73. Moreover, in order to assist the Registrar in the administrative matters that he/she must perform for the Presidency and the Chambers, provision should be made for a separate management function in the form of an **Administrative Unit** attached to the Immediate Office of the Registrar, which would include a Budget Officer (P-4) and a Personnel Officer (P-3) to liaise with the relevant offices of the Common Services Division, supported by a General Service (Other level) staff. In addition, due to the overwhelming high level of resources that the translation and interpretation services would require, in particular bearing in mind that the Court would be using a diversity of official languages, the Court would have to be staffed with an adequate number of translators/interpreters, sufficient to meet the requirements of the judiciary. It is, therefore, also recommended that a P-4 Language Coordinator be placed within this Unit to coordinate on a daily basis the language requirements of the judiciary.[29]

74. While it may not be necessary for all judges to serve immediately on a full-time basis as soon as they are elected, it is advisable, as at ICTY, that a **Chambers Legal Support Section** be set up to support the judges who are involved in pre-trial and trial work, and to commence preparatory work as soon as possible. The activities of the Section would include providing substantive legal advice on issues of criminal procedure, interpretation of the Statute or issues of international law; research and editorial support for the drafting of orders, decisions and judgements; case management support for the Registrar and for the organization of the judicial activities of the Chambers; organization of judicial meetings, such as pre-trial conferences, in collaboration with various sections falling under the responsibility of the Registrar; and generally to act as liaison between the judges, the parties and other organs of the ICC.

75. It would be of importance to create from the beginning separate sections for pre-trial, trial and appeals proceedings. In the first financial period, judicial proceedings may primarily take place in the pre-trial phase and on (interlocutory) appeal. Given the importance of such issues for the future functioning of the Court, adequate staffing is needed from the very beginning of its operation.

76. It is envisaged for one Head of the Chambers Legal Support Section to be appointed at the P-5 level, to serve both the pre-trial, trial, and appeals structures that would be set up. It is proposed that the legal research/assistance function be

[29] See also footnote 17 (Office of the Prosecutor), in which the requirement for a separate translation and interpretation function within the Office of the Prosecutor is set out. Within the judicial pillar, it will be necessary to have a similar translation and interpretation function, which can grow from the post set out here. In the judicial pillar, this function will be responsible for translating/revising and interpreting documents and statements which become part of the case file. The ICTY experience shows that it is essential to have those providing the translation and interpretation services close to the substantive offices which assign them work.

filled at the P-3 level in the first budgetary period. Two such positions would be necessary. In addition to those posts, administrative support staff would be needed for those judges serving on a full-time basis and the Professional staff. It is recommended that each staff member at the P-5 level and above have a General Service level assistant, and that other Professional staff be supported at the ratio of one General Service level assistant for two Professionals, all to be recruited only at the time the senior position is filled. It will further be necessary to provide for a Secretary (General Service (Other level)) for each judge serving on a full-time basis.[30] Thus a total of eight General Service (Other level) staff members would be required.

77. **Public Information and Documentation Section**. The Section would be headed by the Spokesperson for the Presidency (P-4). It is to be expected that there will be many public affairs functions needing to be fulfilled in the first financial period. A comprehensive web site should be set up and, in general, a strategy would have to be devised and implemented to put the Court on the world map. A related issue concerns targeted outreach functions which may have to be performed as the Court becomes involved in cases originating from various parts of the world. Such outreach programmes are not expected to be activated during the first financial period, but need to be included in the planning for this section. It is proposed that, initially, the information and documentation should be set up under the aegis of the Registrar. In later stages of the development of the Court, the Office of the Prosecutor may assume some of the public information functions in respect of that Office.

78. From the first day of operation it will be essential to have a computer specialist in the Section who can begin constructing a web site. It is proposed that such a specialist be recruited at the P-3 level. It is further proposed that the Section should also include one Information Officer (P-2), and one media assistant (General Service (Other level)).

79. **Library and Reference Section**. The building up of a good library will be pivotal in the first financial period, especially given the standard-setting work which the Court will be carrying out in its first years of operation. It is therefore proposed that the Section should be staffed with a Librarian (P-3) and, in the course of the first financial period, an Archivist (P-2) and an Administrative Assistant (General Service (Other level)).[31] It is assumed that the Court library will become part of the United Nations Library network for the purpose of accessing legal databases, etc.

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[30] These functions should not be duplicated with the secretarial staff recruited to support the Presidency, i.e. two GS (OL) positions and one GS (PL) position. See paras. 40 and 41 above.

[31] Drawing on the ICTY experience, it will take quite some time before all library requirements have been identified and acquired. In that light, the offer of the ICTY Registrar to place the ICTY library at the disposal of ICC officials in the start-up phase is significant. This can, however, only be a temporary solution, given the close proximity which much of the material must have to its users.

Judicial Services Division

80. Under the direction of the Registrar,[32] for the first financial period, the Division would be responsible for managing courtroom operations, providing legal aid through the assignment of defence counsel, recommending protective measures and providing counselling and support to victims and witnesses. In the first year of operation, it might consist of the following sections and units.

81. The **Court Management Section** would be responsible for managing the operations and proceedings of the Court, developing directives and regulations to govern the operation of the Court proceedings and related judicial matters (see art. 52 of the Statute). It would also be responsible for conducting research and drafting legal submissions to the Chambers regarding legal issues which may have an impact upon the procedure of the Court sessions insofar as they concern the Registry; providing supervision over the procedural and Court-related aspects of all cases before the Court; advising on different practices on the implementation of the Rules of Procedure and Evidence; as well as coordinating with the Security Section, the Conference Services and Language Section and other sections on the functioning of the courtrooms. It is proposed that the Chief of this Section should be recruited at the P-4 level. It is further proposed, in the light of the standard-setting work that will need to be done, that the Chief of Section should be assisted by a lawyer, who in the first financial period of operation could also act as a Court Officer. This post could be filled at the P-2 level. Also necessary will be the functions of File Clerk and Court Records Management Assistant, which in the first financial period of operation could be combined. This post could be filled by a General Service (Other level) staff. A further function required in the first financial period of operation is that of Court Clerk/Usher (General Service (Other level)).

82. It would be necessary to include in the first budget a certain degree of flexibility so as to meet any urgent and unexpected requirements, in areas such as field operations, travel, overtime, court reporting and the making of transcripts.

83. **Victims and Witnesses Unit**. The Statute and finalized draft Rules of Procedure and Evidence of the Court assign a significant role to the Victims and Witnesses Unit. The "clients" of the Unit will include, in addition to witnesses and victims who appear before the Court, other individuals at risk on account of a testimony. In addition to the traditional duties of protection, support and logistical/administrative/operational assistance, the Unit would be required, among other matters, to provide training to the Court, recommend codes of conduct for investigators, NGOs, etc., and advise witnesses in obtaining legal representation.

84. It is assumed that the Victims and Witnesses Unit during the first financial period of operation would need to prepare itself for worldwide operations and deployment at short notice as much as possible before the first witnesses arrive. In this connection, also included in the present budget proposal are funds to allow for upsurge capacity with regard to operations based on the equivalent of general temporary assistance funds used in the United Nations system. Based on these

[32] The Judicial Services Division could be headed at the D-2 level. It is assumed that during the first financial period there would not be enough activities to justify the establishment of the post. However, should the position become necessary, the appropriation line adopted by the States Parties under regulations 4.2 and 4.3 of the draft Financial Regulations may be utilized, or supplementary budget proposals under draft Regulation 3.6 may be submitted by the Registrar.

assumptions, it is anticipated that the following posts will need to be provided for in the first period of operation of the Court.

85. It is proposed that the Chief of the Unit should be recruited at the P-5 level, in the light of the particular requirements of the position and the type of expertise demanded. It is further essential that a Protection Officer at the P-3 level and an Operations Officer (P-3) be included with the initial set-up of the Unit. **While the Protection Officer would be involved in setting up the systems and procedures which will be necessary to have in place to enable the Registry to deal with the protection of witnesses, the Operations Officer will have to prepare all systems and mechanisms for the logistical aspects of bringing witnesses to The Hague from all over the world, having them stay there, and getting them back to where they came from.** In the initial phases of setting up the Unit, a considerable amount of legal work will need to be done. For this purpose, it is proposed that the legal adviser from the Immediate Office of the Registrar be utilized. In addition, an Administrative Assistant (General Service (Other level)) would be necessary for the Unit. Unless the actual arrival of witnesses is expected in the first financial period, a Support Officer may not be immediately necessary, as the initial work could also be done by the Chief of Section. However, a Support Officer may have to be recruited at short notice, through the use of the provision for temporary assistance.

86. As regards non-staffing costs required for the first financial period, the following general remarks can be made. The Victims and Witnesses Unit would need to procure the appropriate services and equipment in the area of communications and information technology. In the event of the early participation of victims/witnesses in court proceedings, significant funds equivalent to general temporary assistance funds used in the United Nations system would need to be available for contracting primary support services when required.

87. **Victims Participation and Reparation Unit**. This Unit will have to deal with the functions described in articles 15 (3), 19 (3) and 68 (3) of the Statute and rules 16, 50, 59 and 89 to 93 of the draft Rules of Procedure and Evidence relating to participation of victims in the proceedings. It will also have to deal with the functions described in articles 57 (3) (e), 75 and 82 (4) of the Statute and rules 94 to 99 of the draft Rules of Procedure and Evidence relating to reparations to victims. The Unit will have to develop systems and mechanisms for reparations to victims and their participation in the proceedings. The staff required will be one Legal Officer (P-4) and one Associate Legal Officer (P-2).[33]

88. **Defence Counsel Unit**. In the first financial period, and, most likely thereafter as well, legal aid and legal detention matters should be handled by the same office. The Unit would cover **two** core functions: legal aid **and** general assistance to defence counsel. The defence (team) and the defendant are in practice one "customer" for the services to be provided, one party for decisions to be addressed to, and one information structure to be aware of when managing the functions.[34]

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[33] This paragraph does not prejudge the decision that will be taken at the tenth session of the Preparatory Commission with regard to financing the administration and operation of the victims compensation fund provided for in article 79 of the Statute.

[34] The legal aid function advises detainees on the relevant rules for assignment of counsel (Statute, arts. 55, 67). Most detainees address complaints through their lawyers to the Registry and take an active role in the selection of their co-counsel. In maintaining the physical and mental integrity of detainees, counsel is an important partner for the organization.

89. For the first financial period, the functions outlined above could be translated into the following positions. Firstly, there would be a need for a Chief of Unit, who would have to initiate, supervise and manage the drafting of rules and policies and liaise with external parties. Such a manager would have to be recruited at the P-4 level in view of the relevance of the matters for fair trial and the financial management and responsibility connected with the post. Secondly, an Associate Legal Officer at the P-2 level would be required to do much of the groundwork regarding the necessary legal research and drafting. It is envisaged that a Secretary (General Service (Other level)) would be necessary to assist the Unit in facilitating communications, distributing material, establishing databases, etc. Although it is assumed that a situation will not be referred to the Court in the first financial period, such a possibility cannot be completely discarded. Thus, a provision in the amount of €580,000 is included in the reserve for unforeseen expenses to cover legal aid costs if and when necessary. In addition, general temporary assistance funds should be available for the possible requirement of specific investigations, field operations, travel and consultants for specific legal or other matters.

90. **Detention Unit**. In the first financial period of operation of the Court, the Detention Unit would be involved in setting up an appropriate detention facility,[35] establishing adequate procedures[36] and setting up training systems for the relevant staff.[37]

91. These functions could be translated into the following positions: a Commander of the Unit (P-4), a Deputy Commander (P-2) and one Administrative Assistant (General Service (Other level)). Flexible means of recruiting detention guards, in case of need, could be considered.[38]

92. The overall staffing resource requirements of the Registry would consist of one staff at the Assistant Secretary-General level; two P-5; eight P-4; **eight** P-3; six P-2; and one General Service (Principal level) and 17 General Service (Other level) staff. The organizational structure of the Registry is set out in annex I.C and the proposed post requirements are outlined in table 9.

XII. Common Services Division

93. Particularly for the purposes of the first financial period, the establishment of the Common Services Division is intended to maximize efficiency and economy

[35] The establishment of such a facility is crucial for later operations, guaranteeing appropriate detention standards for detainees. The facility would need to include proper cell spaces, recreation space, medical facilities, visiting facilities for small or large groups, cell and visit monitoring equipment, search facilities, interview rooms, etc.

[36] Standard procedures for detention must be in place before accused persons are detained. These may include post orders, medical emergency procedures, standard operations procedures, etc.

[37] It is required that core staff be trained and prepared to deal with the specific needs of detention matters in an international environment in order to be able to train new staff upon detention of individuals at the ICC detention facility.

[38] In this connection, the ICTY experience with a flexible and cost-efficient arrangement with the competent authorities of the Netherlands, whereby cells are rented in conjunction with certain services (prison guards, medical facilities, services for detainees, etc.) on a price-per-cell basis. The cells and the services are leased by the ICTY based on a minimum amount of units, each consisting of 12 cells.

within the parameters of the strict division of powers set out in the Statute between the judiciary (Presidency, Chambers and Registry) and the Office of the Prosecutor. In this model, the judicial branch of the Court would administratively be overseen by the Presidency until the election of the Registrar, while the Office of the Prosecutor would have its own administrative powers. The Common Services Division is envisaged **to provide to** the judiciary, the **Office of the** Prosecutor **and the Registry** administrative services that are a common requirement for **all three**. The Division would report to the Registrar, **and pending** his or her **election**, to the Presidency. **The Registrar and the Prosecutor would cooperate in these matters taking into account** articles 42 **and 43** of the Statute. Examples of such services would be: general services, building management, finance, many aspects of security, procurement, certain aspects of human resources (including training), information technology and communication matters, and some aspects of conference and language services. It is anticipated that during the first financial period of operation of the Court the division will be heavily tasked with many of the operational start-up matters connected with setting up a new international organization. It is envisaged that the Common Services Division would be granted a sub-budget by both the Registrar (on behalf of the Presidency) and the Prosecutor (for the Office of the Prosecutor) to provide the administrative support which each of them requires and would have budgeted for.

94. For the purposes of the first financial period, it is anticipated that the division would be headed by a Director (D-1), who would oversee the work of general administrators and staff with experience in setting up courts. As the establishment of the Court progresses, certain functions, mainly those that are specifically court-related, would be transferred from the Common Services Division to the Office of the Prosecutor or Registry, as appropriate.[39]

95. The Common Services Division would be composed of the following offices and sections.

96. **Office of the Director of Common Services**. The Director of Common Services would direct eight sections. He/she would be supported by one Administrative Assistant (General Service (Other level)).

97. **General Services Section**. The Section would be responsible for travel and traffic arrangements as well as building management and transport activities. It would be headed by a Chief of Section (P-4). The Section would consist of a Building Management Unit, a Central Records Unit, a Protocol Unit, a Logistics Unit and a Travel Unit. Accordingly, these units would require one Building Management Officer (P-3), one Archivist (P-3), one Protocol Officer (P-3), one Logistics Officer (P-3) and one Travel Officer (P-2). One Senior Graphics Design Assistant (General Service (Principal level)) and 10 Service Assistants (General Service (Other level)) would assist in these units. As shown in the organizational structures of the Presidency and the Common Services Division (annex I.A and D),

[39] In this connection, attention is drawn to the translation and interpretation function, which for reasons of economy could, in the first financial period or part thereof, be coordinated within the Common Services Division but which will have to divided into two separate functions quite soon: one for the judicial and one for the prosecutorial pillar (see paras. 52 and 72). It is to be expected that, within the split, certain aspects of the function could be pooled in the Common Services Division. However, the details of the manner and the extent to which that should be done will be best determined by the senior management of the Court at the time.

this section would also include one clerk/driver for the President. This structure assumes that there would be no field operations and that most of the focus would be on basic start-up activities.

98. **Procurement Section**. The Section should be independent of the other sections of the division to avoid any appearance of conflict of interest. It would be headed by a Chief (P-4), and would include one Procurement Officer (P-3) and two Procurement Assistants (General Service (Other level)). As it is anticipated that there would be a large procurement workload in connection with the **initial** phase, **it is expected that much of this work will be outsourced. The** minimum staffing **may** have to be increased to meet extra operational requirements such as activities in the field.

99. **Personnel Services Section**. Besides dealing with a surge of recruitment, the Section would have to deal with the setting up of all personnel administration systems and processes**, including the commissioning of the preparation of job descriptions**. The proposed staffing structure would include one Chief of Section (P-5), one Classification Officer (P-4), one Recruitment Officer (P-3), three Human Resources Assistants (General Service (Principal level)) and one Administrative Assistant (General Service (Other level)).

100. **Budget and Finance Section**. The Section would be responsible for setting up all financial systems and controls**, including arrangements for periodic budgetary monitoring. The Budget and Finance Section would also consolidate, in accordance with rule 103.2 of the draft Financial Regulations and Rules, programme budgets for financial periods at such times and in such detail as the Registrar may prescribe. Such programme budgets shall be prepared on a results-based budgeting basis, in accordance with regulation 3.3 of the draft Financial Regulations and Rules.** In addition, it is assumed that the Section would have to administer and process financial assessments of States Parties. The proposed staffing structure would include one Chief Finance Officer (P-5), one Accounts Officer (P-4), one Budget Officer (P-4), one Disbursements Officer (P-3), one Investment Officer (P-3), one Payroll Officer (P-4), one Cashier (P-3), and one Contributions Officer (P-2). In addition, it would be necessary to include five Finance Assistants (General Service (Other level)) and one Administrative Assistant (General Service (Other level)).

101. Office of Internal Audit. Pursuant to rule 110.1 of the draft Financial Rules of the Court (PCNICC/2002/WGFI/RT.1/Rev.1), provision should be made for an Office of Internal Audit. This Office would conduct independent audits of the financial transactions and the administrative systems underlying such transactions and provide related comments and recommendations to the Registrar and, in areas falling under the authority of the Prosecutor, by virtue of article 42, paragraph 2, of the Rome Statute, also to the Prosecutor. The Office would perform its tasks independently and report to the Registrar. Its administrative allocation would be in the Common Services Division.

102. Accordingly, a provision of €149,800 would have to be made for the Office of Internal Audit, composed of one auditor at the P-5 level, to reflect the level of responsibilities and experience that this function requires, and one staff member at the General Service (Other) level, to provide administrative and secretarial support.

103. **Conference and Language Support Services Section**. In the first financial period of operation, the Section would be mostly responsible for the administrative aspects of translation and simultaneous interpretation services. The proposed structure could be headed by a Chief of Section (P-5) and comprise three Interpreters (P-4), one Head of the Translation Unit (P-4), who will supervise five Translators/Revisers (P-3). It would further be necessary to include two Language Assistants (General Service (Other level)) and one Administrative Assistant (General Service (Other level)). This staffing structure would create the capacity to deal with the official languages of the Court given limited trial activity. Flexibility to recruit on the basis of the equivalent of general temporary assistance funds used in the United Nations will be necessary if other languages and tasks are added to the work of the Section.

104. **Information Technology and Communications Services Section**. The responsibilities of this Section would include computer and communications services. The Section would have to engage in IT development and in setting up structures to support headquarters and field operations. Accordingly, the proposed structure would consist of one Chief of Section (P-5), one Development Officer (P-4), one Computer Systems Officer (P-3), one Programmer/Analyst (P-3), one Associate Computer Officer (P-2), one Associate Audio-visual Officer (P-2), one Associate Computer Training Officer (P-2) and one Associate Database Administrator (P-2), to be supported by seven IT Assistants (General Service (Other level)) and one Administrative Assistant (General Service (Other level)).

105. **Safety and Security Section**. The Section would be responsible for ensuring the security of the Court premises and for coordinating and implementing an information security policy, in concert with both the judicial branch and the Office of the Prosecutor. In the first financial period, the Section would have to set up security systems to cover operations (evacuation systems and protocols, staff security awareness policies and training, and information security policies). In addition, and probably later in the first financial period, the functions of the section may include the requirement to ensure the safety of witnesses in the premises both before and after testifying.

106. The staffing requirements for the first year would include a Chief of Security (P-4), an Information Security Officer (P-3), an Associate Security Assessment Analyst (P-2) and one Administrative Assistant (General Service (Other level)). Moreover, it would be necessary to include 20 Security Officers to provide 24-hour/7 days-a-week guard shifts in addition to the more general security services provided by the host State, as has been the custom at ICTY.

107. **Legal Advisory Services Section**. In the first financial period of operation, the Section would provide legal advice to the Director of the Common Services Division on the legal aspects of administrative matters and complex commercial contracts. It would be involved in the review of all human resources structures and policies, all procurement structures and policies, and all other policies that would be put in place. The staffing requirements for the first standard-setting period would include one Legal Officer at the P-4 level and one Legal Officer at the P-3 level, to be supported by a Secretary (General Service (Other level)).

108. It would seem advisable to envisage for the Division of Common Services a category entitled "Other staff costs". Requirements under this heading would provide for: (a) general temporary assistance resources for replacements in the

division during periods of extended sick or maternity leave; and (b) resources to meet overtime and night differential requirements that might arise. Similar provisions would be needed for the Office of the Prosecutor and for the Registry.

109. The overall staffing requirements of the Common Services Division would thus consist of 1 D-1, **5** P-5, 12 P-4, 17 P-3, 7 P-2, 2 General Service (Principal level), **37** General Service (Other level) and 20 Security Service staff. The organizational structure of the Common Services Division is set out in annex I.D and the proposed post requirements are outlined in table 11.

XIII. Furniture and equipment

110. During the critical **initial** phase, it will be necessary to provide for equipment and furniture to enable all the organs of the Court as well as other bodies and services to function efficiently and effectively in the administration of justice. For example, there will be a need for equipment for electronic scanning and digitizing documents to allow for efficient storage and retrieval of documents and information, including the preservation of evidence. Furniture and equipment will also be required for officials and staff members. **The Netherlands Government will provide free of charge up to 100 workstations, furniture and equipment, in the first financial period. These are a one-off investment for desktops, chairs and cabinets relating to the 100 workstations. The workstations will include telephones, desktop computers and printers compatible with the future network systems of the Court. This will also include a limited number of scanners and photocopiers.**

B. Task list for the preparation of the discussion on a draft budget for the first financial period of the Court at the tenth session of the Preparatory Commission

Object of expenditure	*Remarks*
Remuneration of judges	Pending results in the Working Group on Financial Issues — Remuneration of Judges
Secretariat of the Assembly of States Parties	Pending results in the Working Group on the Assembly of States Parties — Preparatory documents
Expenses related to the Victims Trust Fund	Pending results in the Working Group on Financial Issues — Victims Trust Fund
Issues pertaining to the Assembly of States Parties	Pending decision on the duration, location and number of meetings of sessions of the Assembly of States Parties during the first financial period
Issues pertaining to the contribution of the host country[a]	Discussions between the host country and the United Nations Secretariat will be conducted on the basis of the bids by the host country (to be concluded not later than 20 May 2002)
External audit	Proposal to be prepared by the United Nations Secretariat
Annex on standard costs and non-recurrent expenses	Draft paper to be prepared by the United Nations Secretariat
Working Capital Fund	Proposal to be prepared by the United Nations Secretariat
Decisions relating to elements of the future budget resolution	Input to be prepared by the Coordinator

[a] Provisions for alterations and/or renovation of premises: The Netherlands bid on alteration of the interior layout and design, including the building of a courtroom, if so desired, of the interim premises, also includes wiring for the computer network. This bid entails a spending level of a maximum of €10 million. Costs above this level need to be addressed by the States Parties through an agreed budget.

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Addendum

Annex III

Conditions of service of judges of the International Criminal Court

Full-time judges

1. Salaries

1. The annual remuneration of full-time judges will be €180,000 net.

2. Special allowance for the President

2. A special allowance will be paid at the rate of 10 per cent of the President's annual remuneration. Based on the salary above of €180,000, the special allowance will be €18,000.

3. Special allowance for the First or Second Vice-President if acting as President

3. A special allowance of €100 per day will be paid, subject to a cap of €10,000 per year, to the First or Second Vice-President if acting as President.

4. Non-salary benefits/allowances

Educational assistance

4. When the judges take up residence in the host country, they will be entitled to assistance for the education of dependants, in accordance with terms and conditions similar to those applicable to the United Nations (see administrative issuances ST/AI/2002/1; ST/AI/1999/4; ST/IC/2002/5).

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Pension

5. The judges are entitled to a pension benefit similar to that applicable to judges of the International Court of Justice. The following are the principal features:

(a) The pension scheme is non-contributory, i.e., pensions are a direct charge to the budget;

(b) A retirement pension equal to half the annual salary, at the time of retirement, is paid to a judge who has completed a full nine-year term;

(c) A proportional reduction is applied if the judge has not completed a nine-year term, provided the judge has served for at least three years, but no additional pension is paid if the judge has completed more than nine years of service;

(d) A surviving spouse receives 50 per cent of the late judge's pension. If he or she remarries, he or she will receive a final lump-sum benefit equal to twice the amount of the spouse's benefit;

(e) Pensions in payment are revised by the same percentage and on the same date as salary adjustments.

Health insurance

6. Judges will be responsible for their own health insurance.

Travel/relocation costs[1]

7. When judges take up residence in the host country, they are entitled to:

(a) A trip from his or her declared home[2] to the seat of the Court, in connection with the transfer of his or her residence;

(b) An assignment grant to cover relocation expenses, in accordance with terms and conditions identical to those applicable to the United Nations (see ST/AI/2000/17);

(c) A round trip every second calendar year after the year of appointment from the seat of the Court to his or her declared home;

(d) A trip upon termination of appointment from the seat of the Court to his or her declared home, or to any other place, provided that the cost of the trip is not greater than the cost of the trip to his or her declared home, which was established at the time of appointment;

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[1] The Rome Statute does not specifically address the issue of the residence of judges. Article 35 of the Statute provides that full-time judges of the Court "shall be available to serve on that basis from the commencement of their terms of office". Moreover, article 40 provides that judges "required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature". The question of the residence of full-time judges and their availability to serve on that basis at the seat of the Court is a matter which the Rome Statute has entrusted to the judges. Article 52 sets out the manner in which the Regulations of the Court are to be elaborated and adopted. In considering the issue of the residence of full-time judges, the judges themselves will take a decision as to whether or not residence at the seat of the Court is required for full-time service, bearing in mind the permanent character of the Court.

[2] "Home" is defined as the residence declared by the judge at the time of appointment or as modified subsequently.

(e) Reimbursement by the Court for the travel expenses of the spouse and/or dependent children of the judge for trips undertaken in conjunction with the above where the spouse and/or dependent children reside with the judge at the seat of the Court.

8. All travel shall be by business-class travel between the declared home and the seat of the Court by the most direct route.

Appendix[3]

Non-full-time judges

Salaries, allowances and benefits

Judges who are not required to serve full time at the Court shall be entitled to:

(a) An annual allowance, payable monthly, of one third of the annual remuneration paid to a full-time judge, i.e., one third of €180,000 or €60,000;

(b) A special allowance of €270 for each day that a judge is engaged on the business of the Court;

(c) A subsistence allowance, at the applicable United Nations rate in euros, for each day that a judge attends meetings of the Court at the seat of the Court;

(d) Travel to official meetings of the Court. All travel shall be by business-class airfare between the home country and the seat of the Court by the most direct route.

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[3] This section is subject to further discussion.